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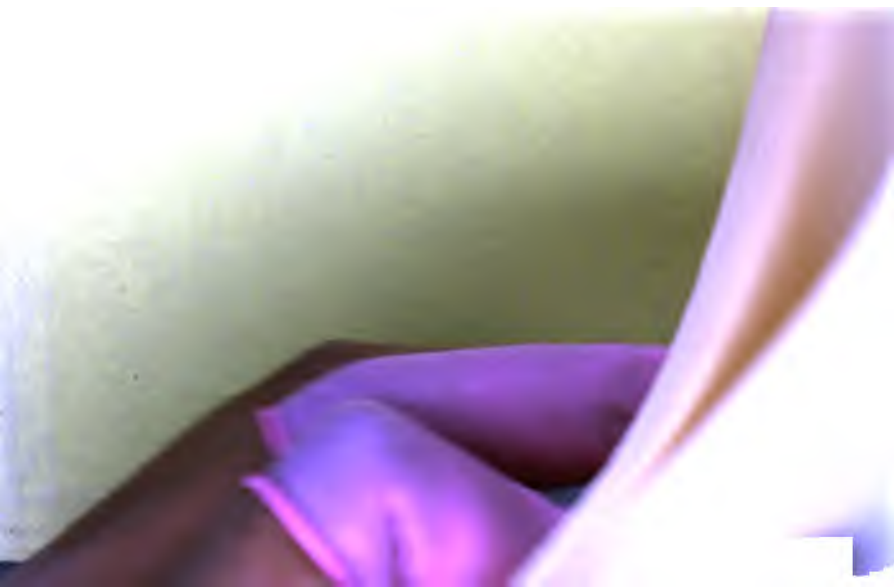

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1874.

THE
LAW OF COPYHOLDS.

A TREATISE

ON

THE LAW OF COPYHOLDS

AND

CUSTOMARY TENURES OF LAND:

WITH AN APPENDIX

CONTAINING

An Abstract of the Stamp Duties affecting Copyhold Estates,

The Copyhold Acts of 1852 *and* 1858,

And the principal Official Forms used for Enfranchisement,

Inclosure, Exchange, and Partition.

BY

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PREFACE.

THE object of the following chapters is to provide a short and convenient handbook of the Law relating to copyholds, and to the manorial freeholds with customary incidents, still to be found in so many districts, of which the general resemblance to certain kinds of copyholds has not unfrequently led to disputes and difficulties. It is hoped that the reader will find in this book a succinct statement of those portions of the old law on these subjects which are still necessary to be borne in mind in dealing with customary estates. The writer has endeavoured to shorten the labour of those who are concerned with lands of these kinds, by omitting a great part of what is stated in the Abridgments, as being rather of historical or archæological value, than of any present practical importance. It has also been thought useful to insert in an Appendix the principal Forms used in dealings with these

hold Commissioners, and to print the Copyhold Acts of 1852 and 1858 at the end of the work. It is hoped that there may be room for a work of this kind, notwithstanding the existence of so many important treatises upon the same subjects, among which the first place must be given to the great work of Serjeant Scriven and the useful manuals of Mr. Rouse and Mr. Cuddon on the subject of the enfranchisement of copyholds.

C. ELTON.

2. *New Square, Lincoln's Inn,*
May 1874.

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CORRIGENDA.

p. 15, line 27, *for* " Aed " *read* " And "

p. 59, line 12, *for* " take " *read* " make "

p. 61, last line, *for* "at the end of this chapter." *read* " in the appendix."

p. 76, line 28, *for* " at the end of this chapter." *read* " in the appendix."

p. 81, line 11, *for* " surrendor " *read* " surrenderor "

p. 100, line 3, *after* " money." *insert* (*a*); line 4. *for* (*a*) *read* (*b*); line 10, *for* (*b*) *read* (*c*); line 16, *for* (*c*) *read* (*d*); line 23, *for* (*d*) *read* (*e*).

p. 163, line 23, *for* " *Phillips* " *read* " *Phillipps* "; line 27, *ditto*.

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p. 183, line 27, *for* " *Murrel* " *read* " *Murrell* "

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p. 198, line 13, *for* " *Wilton* " *read* " *Whitton* "

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p. 255, line 26, *for* " *Tailors* " *read* " *Taylors* "

p. 283, last line, *for* " *Elston* " *read* " *Elstob* "

CHAPTER I.

INTRODUCTORY.

Origin of copyholds—Copyholds and customary estates defined — Customary freeholds — Freeholds with customary incidents — Old division of tenures—Freehold—Tenures in villeinage—Division of Copyholds—Tenant-right estates—Local freehold tenures —Ancient demesne—Burgage—Gavelkind—Nature of manors—Subjects of copyhold tenure—Separate tenements—Portions of wastes—Shares in open fields—Shares in particular products of land—Tithes—Case of Musgrave *v.* Cave *as to fold-course and common in gross—General rule—Copyhold customs—Requisites of valid local custom.*

Nature of copyholds.

It is intended in the following chapters to discuss the chief points in the law of copyholds or customary estates. By the latter term are meant those estates the title to which is not only modified, but altogether constituted by custom (*a*). They may be described as

(*a*) Burton's Comp. 1258; Cru. Dig. Title 10. The following is the ancient definition in Littleton: "Tenant by copy of court-roll is as if a man is seised of a manor within which there is a

land in Domesday Book (*a*). "There is great confusion in the law-books respecting this tenure. The *copyholders* of these manors are sometimes called tenants in ancient demesne, and land held in this tenure is said to pass by surrender and admittance. This appears to be inaccurate. It is only the *freeholders* who are tenants in ancient demesne, and their land passes by common law conveyances without the instrumentality of the lord. The timber and minerals belong to the tenant, and the rent, fines, and services are certain" (*b*). There are, however, as a rule, in manors of ancient demesne customary freeholders, and sometimes copyholders at the will of the lord, as well as the true tenants in ancient demesne (*c*).

These freeholders have in many instances peculiar customs of descent, dower, curtesy, &c. In some places the freehold descends to the youngest son by a custom of borough-English, or to the youngest instead of the eldest male in each degree, or to the youngest or eldest daughter or sister, or to all the males equally as in gavelkind.

(*a*) There were originally 1422 of these manors. The tenure has become of small importance since the exceptional privileges of the tenants were taken away by the Act 3 & 4 Will. 4, c. 74. Before that time the tenure might be converted to common socage by the joint act of the lord and tenant.

(*b*) 3 Real Prop. Rep. 12. and *cf.* 2 Inst. 325. Even Sir W. Blackstone seems to have been misled upon this point.—See 2 Bl. Comm. 99, and his Tract called *Considerations upon Copyholders.*

(*c*) Co. Copyh. s. 32; Bract. i. c. 2; Britton, c. 66, Fleta i. c. 3.

Burgage tenure prevails only in certain cities and boroughs, which have existed as such from time immemorial. "Such boroughs (says Littleton) have for the greater part divers customs and usages which are not had in other towns: for some of them have such a custom, that if a man has several sons and dies, the youngest shall inherit all his father's tenements within the borough, as heir to his father by force of the custom: which is called borough-English. Also in some boroughs the wife shall have for her dower all the tenements, which were her husband's" (*a*). And in others the widow has a moiety during her widowhood, or some other portion. Burgage.

The tenure of *gavelkind*, by which most lands in Kent are held, is a very ancient species of socage, "the name being derived from a word which signifies rent or the customary performance of works of Gavelkind.

(*a*) Co. Litt. ss. 166, 167. Borough-English, or the custom of English cities, was so called in opposition to the law of descent prevailing in towns settled by the Normans. Thus Nottingham was as late as 1713 divided into the English borough and the French borough; in the one, real property descended to the youngest son in *burgh-Engloyes* or borough-English: in the other, to the eldest by the ordinary law, which they called *burgh-Francoyes*. Borough-English has been fancifully derived from barbarous feudal customs which were never known in England. "The custom stood with some certain reason, because that the youngest son, if he lacked father and mother, because of his younger age might least of all help himself," and the law of the place therefore directed the descent of the real estate, "generally little more than the father's house, where it was most wanted."—Glanv. vii. c. 3; Robins. Gav. Appendix. In the Tenures of Kent, c. 7, various authorities bearing upon the matter are collected.

husbandry." Its principal incidents are the partibility of the inheritance among the males in each degree, the right of the widow and widower to have half the land for dower or curtesy until a second marriage, the widower taking his customary estate by the curtesy whether issue has been born of the marriage or not, the freedom from escheat for felony, and the infant's right to aliene by feoffment at the age of fifteen years. In many places in Kent the freeholders are subject to customary heriots, fines, and other ancient dues, and are compellable under penalty of distress to come for admittance into their tenancies.

The most remarkable incident of this tenure being the partibility of the land upon descent, the word *gavelkind* has come to be applied to many copyholds which only resemble the freehold tenure in this particular: but this use of the word is improper, and apt to lead to mistakes. There are some few copyholds in the county, which generally follow the customs of gavelkind freeholds. If such a copyhold is enfranchised the customs are extinguished: but nothing less than an Act of Parliament can alter a custom attached to a freehold tenure, which is said therefore to "run with the land," or be "inherent in the land."

A great number of estates in Kent were disgavelled by private Acts, which extended however only to the custom of partition on descent (*a*).

(*a*) *Wiseman* v. *Cotton*, 1 Sid. 135; *Doe* v. *Brydges*, 6 M. & G. 282; Co. Litt. 140, *b*. The principal Acts were 31 Hen. 8, c. 3,

All lands in this county are presumed to be held in gavelkind, until the contrary is proved. The test lies in proof of the tenure at the time of the Norman Conquest (*a*). No land is now gavelkind which can be shown to have originally been held by a tenure higher than socage, as free alms or a military tenure. If the manor was originally in the superior tenure, the demesnes, wastes, advowsons, freehold of the copyholds, and profits incident to the manor, are all held in free alms or in common socage and not by the customary tenure.

Nature of manors.

Since every copyhold must be or have been parcel of an ancient manor, and demised or demiseable by the custom thereof from time immemorial, it is necessary to make a few observations on the nature of an ancient manor.

A manor properly consists of demesne lands, jurisdiction in a court-baron, and services of free tenants in fee, liable to escheat and owing attendance at the court. If the numbers of such tenants is reduced below two, the court cannot be held and the manor ceases to exist, but may survive as a manor by

and an Act of 2 & 3 Edw. 6. Others were passed in the 11 Hen. 7, 15 Hen. 8, 1 Eliz., 8 Eliz., and 21 Jac. 1. For the lands affected, see Robinson, Gavelk. and the Tenures of Kent. There was also a practice of disgavelling by royal prerogative and royal licence, which very early became obsolete.

(*a*) "The law of gavelkind is unlike other customs; it is not good if it begins just before the reign of Richard the First. This custom existed long before other customs, and almost before any history of England."—*Lushington* v. *Llandaff*, 2 New Rep. 491.

for the purpose of making a
or for holding copyholders' cou
demesnes are alienated, the
d, and can be no more than a
A temporary severance of all the d
ase for years, causes a suspensio
ermanent separation causes its extin
is not divisible (*b*) : but there is
on to this rule in the case of a
arceners. In an early case it was

Comp. 1026 ; Cru. Dig. Copyh. Q. Where t
ected. As to the constitution of a manor,
R. 447 ; *Soane* v. *Ireland*, 10 East, 259.
ntiquity of manors, Co. Copyh. s. 31 ; 2 Ro.
or. Tenures, 102. citing Yearb. 35 Hen. 8.
upposed that manors might be created at any
tute *Quia Emptores*, 18 Edw. 1, extended to ter
e crown by the statute *De Prerogativa Regis*, 17
Rep. 3, as to Rectory Manors, and 1 Watk. Co
pare 2 Ro. Abr. 120, 15. Manors existed in t
early in the eleventh century, and in a very sin
end to a much more distant antiquity. It seems
luded that the manor is a modification of the vill
established by the first German settlers in Engla
reason to suppose that the number of legal man
h increased after the Norman conquest in the sett
and. Although fresh tenures might be created,
new court was a matter of royal prerogative, and af
held that even the king could not make a new cou
which depend upon the continuance of time co
e compass of the king's prerogative."—Co. Copy

s of Buccleugh's Case, 5 Mod. 150. As to partitio
decrees of the Court of Chancery, see *Cattley*
& J. 595.

that if upon such a parti
allotted to one sister, and
another, there would be an
if one died without issue and
manor would revive, because
were in by an act of the
and services were again
law (*a*).

To take a fuller definition, a
as consisting: 1. Of the demesn
is seised, whether in his own occup
his lessees for years, which compr
lands subject to the tenants' rights
also the lands of the copyholders and
which at law and apart from the custo
as a kind of tenancies at will; 2. Of
or the rents and duties reserved upon
grants in fee, made to the freehold tenants
statute *Quia Emptores*, 18 Edw. 1, since
fresh tenures could be created; 3. Of
sion in those parts of the demesnes which
granted for life or for an estate-tail, and o
of possible reversion which consists in th
escheat on occasion of a free tenant dyin
and heirless; 4. And there are in ge
annexed or appurtenant to the manor
franchises, such as the right to have

(*a*) *Sir Moyle Finch's case*, 6 Co. 64, *a*; Bu
In former times there were numerous exampl
of manors between co-heiresses at law and co-

waifs and strays, or treasure-trove, the liberties of holding fairs and markets, of taking tolls and the like (*a*). 5. A court-baron for the freeholders and a customary court for the copyholders (if any) are necessary incidents to every manor, and the principal manor in a parish will usually have an advowson appendant to the demesnes, which if once severed must always for the future be an advowson in gross. When the manor abuts upon the sea, the fore-shore between the high and low watermarks of the average tides may be parcel of its waste land, and this is generally the case when the lord has by grant or prescription the franchise of taking wreck.

Since the Statute *Quia Emptores*, no new tenure can be created by a private person on any conveyance in fee-simple. So that on the alienation of any of the demesnes, they cease for ever to be parcel of the manor, and new services cannot be reserved. And even if freehold lands escheat to the lord or are

(*a*) Franchises are defined to be royal privileges or branches of the king's prerogative, subsisting in a subject by grant from the crown, or under a prescription implying a grant. They are chiefly of two kinds, viz.: 1. those which were parts of the prerogative originally, as the right to wreck, to the goods and chattels of felons, &c.: and, 2. those which could have no existence until their creation by the crown. The first, but not the second class, are merged in the prerogative when the crown acquires the lands to which they are annexed, and will not pass as appurtenant to the land upon any new grant without express words, either mentioning the franchise which was merged, or at least stating that the new grantee shall hold the land "in as large and ample a manner as the former owner held it."

purchased by him, they cannot become parcel of the manor again, and will not pass by a conveyance of "the manor and lands belonging thereto."

But all the lands which originally formed part of the manor, or were held of it, are said to lie within the ambit of the manor: and in some points are subject to the jurisdiction of its courts, and in common parlance are said to be still "within the manor." (*a*).

It was formerly held, that if the lord granted away the freehold of all the copyhold lands, or several of them, the grantee would have a kind of manor and might hold courts. But it is now settled that the land is severed, that no Courts can be held, and that the customary estates must be dealt with by common law conveyances, although the copyholders are still said to hold by their customary tenure, and to be liable to all such payments and services as are not connected with attendance at a court (*b*).

Subjects of copyhold tenure.

With respect to the subjects of copyhold tenure, Lord Coke says that "all lands and tenements within a manor, and whatever concerns lands or tenements, may be granted by copy," (*c*) and he selects as examples: 1. A customary manor (*d*). 2.

(*a*) *Delacherois* v. *Delacherois*, 11 H.L.C. 62.

(*b*) *Melwich* v. *Luther*, 4 Co. 26; *Bright* v. *Forth*, Cro. Elis. 442; *Murrell* v. *Smith*, 4 Co. 21; *Phillips* v. *Ball*, 6 C.B. N.S. 811. And see Gilb. Ten. 197, and *Lemon* v. *Blackwell*, Skin. 191. 6 Vin. Ab. 20.

(*c*) Co. Litt. 58, *b*.

(*d*) It was resolved in *Neville's case*, 11 Co. 17, that a manor may be a copyhold, and that the customary lord may hold courts

Underwood without the soil, the herbage or vesture of land, and, 3. A fair or similar profit appendant to a manor. "Things that lie not in tenure are not grantable by copy, as rents, commons in gross, advowsons in gross, and such like, all which are incorporeal hereditaments, and therefore no rent can issue out of them, neither can they be held by any manner of service. But an advowson appendant, a common appendant, or a fair appendant, may pass by copy, by reason of the principal thing to which they are appendant: and generally what things soever are parcel of the manor, and are of perpetuity, may be granted by copy according to the custom, as underwoods, for after they are cut they will grow again, and so of herbage or any other profit of the manor." (*a*). Thus there may be a copyhold grant of "twenty loads of hasel or as many of maple, in the disjunctive, to be cut down and taken by the grantee," or of "twenty trees growing upon Blackacre or Whiteacre to be cut down yearly by the lord and delivered to the grantee on such a day," and the like (*b*).

The subjects of customary tenure are most usually portions of the demesne-lands which have been

and grant copies; that the copyhold manor will pass by surrender and admittance, and that its lord shall pay fines on descent and alienation. There can be no freeholders of such a copyhold manor or reputed manor.—See Gilb. Ten. 215; Vin. Abr. Copyh. E.

(*a*) *Hoe* v. *Taylor*, 4 Co. 31; Co. Copyh. s. 42.

(*b*) *Ibid*; see Gilb. Ten. 332.

demised by copy of court-roll from time immemorial as separate copyhold tenements. By special custom however, but in all cases with the consent of the homage-jury at a customary court, fresh portions of the waste may be granted as copyholds (*a*). And where the sea shore or a river bed forms part of a manor there may be similar customs of granting portions for fishing-places, as fresh copyholds, or there may be portions which have from time immemorial been granted by copy (*b*).

The tenement need not be a separate portion of the demesnes, but may be a "shifting severalty" in an open field or meadow, or a lot-meadow divided into parcels the occupation of which is interchanged in a yearly course of rotation (*c*).

And almost any separate product of land, or a fixed share in any of such products may be held by copy of court-roll, as the sole and several pasturage

(*a*) *Arlett* v. *Ellis*, 9 B. & C. 685.

(*b*) *Berkeley's Case* in Hale, *De Jure Maris*.

(*c*) *Pratt* v. *Groome*, 15 East, 235. "Albeit land be the most firm and fixed inheritance, and fee-simple the most absolute estate a man can have: yet may the same at several times be moveable, sometime in one person and *alternis vicibus* in another, nay, sometime in one place and sometime in another. As for example, if there be 80 acres of meadow which have been used time out of mind to be divided among certain persons, and a certain number of acres appertains to each of these persons, as for example, to A. 13 acres, to be yearly assigned and allotted out, so as sometime the 13 acres lie in one place and sometime in another, and so of the rest: A. hath a moveable fee-simple in 13 acres, and it may be parcel of his manor, albeit they have no certain place, but are yearly set out in several

which could legally be allowed in accordance with the custom as alleged (*a*). As to the continuousness of the usage, there must be proof that the custom has been used, and that there has been no interruption *in the right*, though there may have been interruption in the possession or actual usage (*b*).

The custom must also be *reasonable*, *i. e.* not absurd, immoral, or prejudicial to the interests of the State, nor destructive of the property where the custom is to be exercised, or of the copyholder's estate, but such as can fairly be imagined to have originated in an agreement before the time of memory.

No usage can be established by way of custom, which within time of memory was allowed by the common law, and since disallowed by statute. No custom can be set up against the express provisions of an Act of Parliament: but a statute merely declaratory of the common law, whether its form be negative or affirmative, will not affect the continuance of a local custom. "A statute made in the affirmative, without any negative expressed or implied, does not alter the common law" or affect the existence of a custom (*c*).

(*a*) *Bryant* v. *Foot*, 2 L.R. Q.B. 161. *Portland* v. *Hill*, 2 L.R. Eq. 768. *(Marquis) Salisbury* v. *Gtadstone*, 6 H. & N. 123; 9 H. L. C. 692.

(*b*) Co. Litt. 110 *a*. 114 *b*.; Co. Copy. s. 33. *Case of Tanistry*. Dav. 31, in which case the nature of local customs is shown in detail, and see Vin. Abr. Custom. and Com. Dig. Copyh. S.

(*c*) Co. Litt. 115 *a*.; and Harg. notes.

CHAPTER II.

NATURE OF ESTATES IN COPYHOLDS.

General rules applicable to copyholds and freeholds alike—Reversionary estates—Contingent remainders in copyholds—Undivided estates—Equitable estates—Follow rules of legal estate—Statute of frauds—Constructive trusts—Resulting trusts—General rules—Attendant terms—Estates in futuro—Powers of appointment—Springing and shifting uses—Maximum of estate allowed by customs of various manors—Division of copyholds. I. Copyholds of inheritance—Customary fee-simple—Conditional fees—Base fee—Customary entails—Old modes of barring such entails—Fines and Recoveries Act—Mode of disposition—Of legal entail—Of equitable entail—Enrolment on court-roll—Principal provisions of the Act—Who may dispose of entailed estates—Limited dispositions—Disposition by married woman—Office of protector—Period of Enrolment—Estates for life—Estate pur auter vie—Occupancy—Special occupancy—Descendible freeholds—Quasi-entail—Effect of Wills Act—Chattel interests in copyholds—Lease for a year—Leases

inheritance, copyholds for lives, and copyholds for years respectively.

I.—Copyholds of Inheritance.

Estates in copyholds of inheritance.

In copyholds of the first kind the tenant may have a customary fee, or any less estate, as now to be mentioned. As in the case of freeholds the estate in fee may according to the circumstances be absolute, conditional, or qualified. (*a*). And by the customs of a great number of manors an estate-tail is authorised to be created.

Conditional fee.

A conditional fee is where the estate is given to a man and his heirs, on condition that something shall be done, or to cease when something is done, or unless some act shall be done or something happen within a given time. And in manors where entails of copyholds are not allowed a limitation, which otherwise would create an estate-tail, will pass an estate similar to a "fee conditional at common law," or in other words a fee upon condition that the tenant shall have issue. Upon the birth of a child, the estate is at once enlarged into a fee-simple absolute. Before

(*a*) "All inheritances (wrote Lord Coke) are of two sorts, either fee-simples or fee-tails. Of fee-simples some are determinable, some are undeterminable. Determinable, as where land is given to a man and his heirs so long as Paul's steeple shall stand. Undeterminable, as where land is given to a man and his heirs without further limitation. Of fee-tails, some are general, some are special. General, as where land is given to a man and the heirs of his body, or heirs male or female of his body. Special, as where land is given to a man and the heirs, male or female, which he shall beget of such a woman."—Co. Copyh. s. 47.

such birth, the tenant can only aliene a defeasible estate, subject to the "possibility of reverter" or chance of the estate going back to the donor upon failure of the condition. If however the tenant can acquire this "possibility" for his own benefit before the birth of issue, the lesser estate will merge in the greater and the conditional quality of the fee will once be discharged.

A qualified or base fee in copyholds (as in freeh is an estate given to a man and his heirs unt happening of some event or so long as a given of things shall continue. The commonest examp this estate (to which the name of base-fee is espe applied) is where a tenant in tail disposes of the in fee without the consent of the protector o settlement. This will pass an estate in fee qu to last so long as there shall be issue in tail disposing tenant in tail.

Copyholds are not within the statute De 13 Edw. 1., but may be entailed if there is a c to warrant it. And the limitation may be eitl tail-male or tail-female, and either in gener special tail: and on the death of one of the p who are tenants in tail-special, the other will h estate-tail after possibility of issue extinct, as case of a freehold. In conformity with the respecting freehold estates, and to prevent any being inalienable, it was always held that th might be barred in one of the following

"as a means of unfettering estates and to prevent perpetuities." (*a*).

Before the Act for abolishing Fines and Recoveries, 3 & 4 Will. 4, c. 74, copyhold entails might be barred 1 by a customary recovery in the lord's court: 2. by a surrender: 3. in some places, by a preconcerted forfeiture to the lord followed by a fresh grant: and 4. by a grant of the freehold to the copyhold tenant in tail. (*b*). An equitable entail in a copyhold was, where such a course was practicable, barred in the same way as a legal entail. In other cases, any Act expressing the intention to destroy the equitable entail would have the desired effect. (*c*).

By s. 50. of the last-mentioned Act it is provided, that all the previous sections, relating to dispositions by tenants in tail of freeholds, shall apply to copyholds so far as circumstances and the different tenures will admit: except that the disentailing disposition of a legal estate-tail in a copyhold is to be made by surrender, and in the case of an equitable entail, either by a surrender or a deed enrolled within six months upon the court-rolls of the manor. (*d*). The

(*a*) *Roe* v. *Baldwere*, 6 T. R. 104.

(*b*) *Dunn* v. *Green*, 3 P. Wms. 9; *Everall* v. *Smalley*, 1 Wils. 26; Gilb. Ten. 177; Co. Litt. 60 b.

(*c*) *Otway* v. *Hudson*, 2 Vern. 583.

(*d*) The term "estates-tail," as used in this Act, in addition to its usual meaning includes a base-fee into which an estate-tail shall have been converted. "Base-fee" in this Act means exclusively that estate in fee into which an estate-tail is converted when the issue in tail are barred, but persons claiming estates by way of remainder or otherwise are not barred.—s. 1.

consent of the protector of the settlement, if given by deed, is to be produced and enrolled in the same way together with an endorsement showing that the deed was produced within the six months. If given by deed, the protector's consent is to be stated in the memorandum of surrender and enrolled therewith, the protector signing such memorandum before enrolment. If the surrender is made in court the entry of the surrender containing a statement that the consent has been given, is to be made upon the Court-roll (*a*).

With reference to a disentailing deed affecting equitable entail of copyholds, it is provided that the deed shall be entered on the court-roll; and for purposes of such entry it has been held sufficient that the contents of the deed should be proved by affidavit. (*b*). And if there shall be a protector's consent to the disposition, and such protector shall give his consent by a distinct deed, the consent shall be void unless the deed shall be executed on or before the day on which the disposition is made. Such consent is to be entered on the court-rolls of the manor, and it is imperative on the lord, steward, or deputy (required so to do) to enter such deed or deeds; and he shall endorse on each deed so entered a memorandum signed by him, testifying the entry of the same on the court-rolls." (*c*). By the same section it is

(*a*) ss. 51, 52.
(*b*) s. 53, *Crosby* v. *Fortescue*, 5 Dowl. 273.
(*c*) s. 53. In certain manors the customary free-

vided, that every deed disposing of a copyhold by an equitable tenant in-tail shall be void against any person claiming the land for valuable consideration under any subsequent assurance entered on the court-rolls before the entry of the deed of disposition.

By s. 54 of the Act it is provided, that in no case, where a disposition of a copyhold by a tenant in tail shall be effected by surrender or deed, shall the surrender, or the memorandum, or a copy thereof, or the deed of disposition, or the deed (if any) by which the protector shall consent to the disposition require enrolment, otherwise than by entry on the court-rolls.

The following are the principal provisions of the Act which by s. 50 are made applicable to copyholds.

Every tenant in tail may dispose of the land in fee or for a less estate or against all persons claiming under the entail, and where an estate-tail has been converted into a base-fee, the person who would otherwise have been tenant in tail may dispose of the land as against all persons claiming estates to take effect after the base-fee, so as to enlarge the base-fee into an absolute fee. (*a*).

Limited dispositions by tenants in tail, as by way of mortgage or the like, are a bar in equity as well as at law notwithstanding any intention of the parties

no court-roll. In such a case the provisions of this section are inoperative, but the rest of the provisions of the Act apply to the customary freeholds in such manors, as much as to other copyholds. See *Reg.* v. *Ingleton*, 8 Dowl. P. C. 693.

(*a*) ss. 15, 19.

to the contrary. And it is provided, that "if the estate created by such disposition shall be only an estate *pur autre vie* or for years, or only an interest, charge, lien or incumbrance, 'then such disposition shall in equity be a bar only so far as may be necessary to give full effect to the mortgage, or to such other limited purpose, or to such interest, charge, lien or incumbrance, notwithstanding any intention to the contrary may be expressed or implied in the deed by which the disposition may be effected.' (*a*).

If the tenant in tail is a married woman the concurrence of her husband is necessary in every such disposition, and any deed which may be executed by her for effecting the disposition must be acknowledged separately by her. (*b*).

The protector, (whose office and powers are described in the Act s. 22. to s. 33.) is in general the owner of the first estate under a settlement, for life or for years determinable upon a life, prior to the estate-tail, excluding tenants in dower and bare trustees. Without his consent the tenant in tail can create or dispose of no higher estate than a base-fee. A married woman who is protector can consent as a *feme sole*. (*c*).

Before the passing of the Act an estate-tail could not be barred without the consent of the person (if any) who was entitled to the first freehold estate under

(*a*) s. 21.
(*b*) s. 40.
(*c*) s. 45.

the settlement, prior to the estate-tail. Such prior estates were frequently acquired by strangers to the settlement by way of purchase or mortgage, sometimes as a mere speculation for the purpose of obtaining money for a consent to the barring of the entail. Now, by s. 22. of the Act, the original owner of the prior estate continues to be the protector, although the estate may have been charged or incumbered by the owner or settler or otherwise, and although the whole of the rents and profits are exhausted or required for meeting the incumbrances, and although the estate may have been absolutely disposed of by the owner, or in consequence of his bankruptcy, or by any other act or default of the owner. The protector's power of consent is not a trust as regards the ulterior estates: and, although his absolute discretion must remain unimpeded, the tenant in tail may purchase the consent. Any agreement by which the protector may undertake to with-hold his consent is void, and his giving consent subsequently to such an agreement will not be regarded as a breach of a contract or trust.

The period of enrolment for all the deeds required to be enrolled by the Act is six months from the date of execution: and the enrolment, when made, relates back in each case to the date of execution. (a).

Estates for life.

Estates for life in copyholds of inheritance are so different from the copyholds for lives to be hereafter described, that it will be convenient to treat of these

(a) s. 36.

different kinds of copyhold life-estates separately and without reference to each other.

Of life-estates in copyholds of inheritance some are created by the act of the party, and some by force of the custom of the manor. Of the first sort some are determinable by death, some by collateral means; by death, as estates lasting during the life of the lord, the tenant, or a stranger (in a case of voluntary grant by the lord), or lasting during the life of the surrenderor, the surrenderee or a stranger (in a case of conveyance by a copyholder); by collateral means, as estates granted to a widow or widower until marriage, to an office-holder so long as he shall perform the duty of his office, or the like. In the latter cases the tenants will have estates for life, though determinable on certain events, because estates of this kind may be limited either by the actual duration of a life or by any uncertain period, which cannot last longer than a life and which does not depend on the will of the person next in succession. Of life-estates created by the custom of the manor the most usual examples are the customary estates of the widows and widowers of copyhold tenants, who generally hold a portion of the tenement as their customary "freebench" until death or a second marriage.

When a man holds during the life of another person, he is called the tenant *pur auter vie* and the other the *cestui-que-vie*. If the grant should be to one for the lives of several, the estate is in effect to continue during the life of the last survivor of the

cestui-que-vies: but it may be giv
lives of several, and in that case the
no more than an estate for the life of
who shall die first. When the gift is
for their own lives, it is understood
tenancy extending to the life of the
each will hold for his own life only if the
should by any means be severed.

Occupancy.

When lands in ancient times were
man for the life of another, who happen
the tenant *pur auter vie*, the estate belo
first person who might enter as an "occu
though it was always held that in copy
was no "general occupancy," yet in such
lord was allowed to hold the land upon
somewhat similar to that of general occ
freeholds, before that kind of title was
And in a modern case (*a*) a custom was h
which extended the principle of occupancy
holds by giving the estate to a *cestui-que-vi*
tenant died intestate. But since the Wills Act
c. 26, the interest of the tenant for the life of
person, who survives, will in every case pass
executors or administrators of the original t
unless he has alienated it in his lifetime.

Special occupancy.

But if the copyhold had been given to one an
heirs for the life of another, or if the tenant
aliened to another person and his heirs during

(*a*) *Doe* v. *Goddard*, 1 B. & C. 522.

life of the *cestui-que-vie*, the heirs were always permitted to take by *special occupancy*, if there had been no alienation *inter vivos* or by means of a devise: and they were said to inherit a "descendible freehold" or a descendible life-estate. A similar limitation to a man and the heirs of his body for the life of another person is called a quasi-entail, and the special occupant is said to be quasi-tenant-in-tail of the descendible life-estate. But there is no estate-tail in the proper sense of the word: and the estate can be alienated by the tenant without any disentailing assurance. In the same way the executors and administrators of the tenant *pur auter vie* may be nominated to take as special occupants; and when the heirs, executors, and administrators are all named, it is held that the heir should be preferred to the personal representative.

The Wills Act extends to all estates *pur auter vie*, whether there are any special occupants or not, and whether the same are of freehold, customary freehold, tenant-right, customary or copyhold, or any other tenure (*a*).

Chattel interests.

Terms of years in copyholds of inheritance are to be distinguished from copyholds for years, which cannot be granted out for any greater estate than the term warranted by the custom, and which have several peculiar qualities to be hereafter mentioned. The lord may demise a copyhold in hand for a term instead of making a voluntary grant, and "terms of years in

(*a*) 1 Vict. c. 26, s. 3.

But in these cases there is generally a tenant-right of renewal in the heirs of the tenant.

Customs of barring lives by first taker

Where copyholds are granted for the lives of several persons, the first-named life or "the taker" is generally, though not invariably the beneficial owner. By the special customs of a great number of manors the first taker has right to surrender his estate and thereby to bar the estates of all the rest (*a*). And it is frequently part of the custom, that the life in possession or the first of the lives in possession shall have a veto upon any fresh creation of tenancies in remainder without his assent or "goodwill," for the manifesting of which there is frequently a customary ceremony: the object being to preserve to the beneficial owner the power of surrendering to the lord and taking a new estate for his own benefit.

What estates to be granted.

According to the rule, that he who can grant the greater estate can also grant the less, when copyholds are demiseable by the custom for any number of lives, they may be demised for any estate equivalent or inferior to the amount of interest allowed by the custom. Thus if the custom is that copyholds may be granted for three lives, an estate may be granted to three persons for the lives of two, or for one life, or any estate within the custom. So where the custom is to grant for life absolutely, the grant may be for a qualified life-estate, as to a woman during her widow-

(*a*) *Zinzan* v. *Talmadge*, Pollexf. 564. The custom will be construed strictly, and the first life will not be allowed to bar the remainders, except in the precise manner authorised by the custom.

hood.

And by a custom which allows a grant to three successively, the grant may be to one for three lives or for the life of himself and two others successively; and if a grant for life is authorised, a demise for years may be made under the custom (*a*). And on the same principle a copyhold for lives may be given for certain lives to a man and his heirs, or his executors and administrators, as special occupants.

The doctrine of resulting trusts is of particul importance in copyholds for lives. The general rule that there will be a resulting trust to the person finds the money for the admittance-fine, whether copyhold is taken in the names of the purchaser others jointly, or in the names of others without of the purchaser, whether in one name or several, whether the lives take jointly or successively, ur it should be a case of advancement (*b*). If it app that the fine is paid by one of the lives named in copy, he will be the proprietor, whether by custom first taker has power to bar the other lives or not, the rest will be trustees for him. And if the taker, under such a custom, were to bar the estat those who have paid the fine, he would thereby stitute himself a trustee for them of whatever est acquired or retained in the tenement. A custom

(*a*) *Gravenor* v. *Tedd*, 4 Co. 23; 1 Ro. Abr. 511. *Hopkins*, Cro. *Elis.* 323; *Smartle* v. *Penhallow*, 6 Mod. Com. Dig. Copyh. C. 10, where the cases are collected.

(*b*) *Dyer* v. *Dyer*, 2 Cox Ch. Ca. 93. White & Tudor's Cases in Equity i. 184, and notes.

the lives named in succession should have the b
ficial ownership, though the first taker paid the t
would be void; but where the money is contribut
equally, there is no reason why the beneficial esta
should not go in the order named in the copy (a).

Right of renewal.

In some manors the copyholders for lives have a tenant-right of renewal. But to support such a custom, the tenant must prove a constant usage of renewal upon payment of a fixed fine. "It will not be sufficient to allege it to be on payment of a reasonable fine, on account of the difficulty of ascertaining the *quantum* of such a fine. But if a custom be not found to renew on payment of a certain fine, the lord may insist on his own terms: and the only proof that can be given of such a custom is the fact of renewals having taken place according to some certain standard, that is, upon a fine certain" (b).

Nomination of successor.

In some manors the tenants have a right of appointing their successors, which resembles a tenant-right of renewal: as by the custom of the manor of Yetminster Prima in Dorsetshire, where the copyholds are

(a) A custom opposed to the doctrine of resulting trusts is void. *Lewis* v. *Lane*, 2 M. and K. 455. In the earlier case of *Edwards* v. *Fidel*. 3 Madd. 238 there seems to have been some uncertainty on this point.

(b) *Wharton* v. *King*. Anst. 659. *Duke of Grafton* v. *Horton*, 2 Bro. P. C. 284. See *Freeman* v. *Phillipps*. 4 M. and S. 486. where a custom was alleged to exist for the copyholder to renew, paying such fine as should be set by the homage, not exceeding two year's improved value.

granted for one life only, and "any tenant may assign, nominate, or surrender his tenement to his child or any other person."

Tenants with this power of nomination or with a tenant-right of renewal are called "quasi copyholders in fee," and are allowed many of the privileges which usually belong to copyholds of inheritance.

Elsewhere the tenants have by various local customs preferential claims to be admitted to neighbouring copyholds on any terms which a stranger will offer, and in some manors the heir or nearest blood-relation of a deceased tenant has a similar option in the nature of a tenant-right.

Trustee renewing.

Where there is only a habit of renewal, without a tenant-right, a copyhold will come within the general rule of equity, that a trustee renewing for his own benefit will hold the land for his *cestui-que-trust*, and a life-tenant or other person with a limited interest in a renewable copyhold will be considered a trustee for those in remainder. It seems however that a trustee or tenant for life might purchase the freehold interest, and so practically destroy all chance of future renewals, and hold it for his own benefit, unless those in remainder could show that he took an advantage from his position as trustee, or as having an interest in the settlement, which a mere stranger would not have enjoyed; but where there are under-tenants who have a covenant that their interest shall be renewed *toties quoties* with every renewal of their lessor's interest, a

render—Tenant cannot convey more than he has got—To what uses surrender may be made—Unborn or unascertained persons—Surrender to use of husband or wife—To persons to be afterwards appointed—Settlement of copyholds on trusts—Trusts how declared—Conveyance to charitable uses—Construction of surrenders—Estate of surrenderee—Of surrenderor—Effect of surrender as between lord and tenant—As between the parties—As to conveyance by an unadmitted purchaser—Voluntary conveyances of copyholds—Surrender when supplied in Equity—Effect of admittance—Admittance by attorney—Admittance how compelled—Effect of admittance of particular tenant—Re-admittance when required—Conveyance of copyholds on sale—Covenant to surrender—Its effect—Enrolment of surrender—Searches for incumbrances. Special conditions—Requisitions—Specific performance—"Dayne surrenders"—"Excepted tenements"—Mortgage of copyholds—Second mortgage.—Discharge—Equitable mortgage—III. *Devise of copyholds—Surrender to use of will—Some copyholds formerly not deviseable—Dormant surrender—Act of* 55 *Geo. III., c.* 192*—Only supplied matter of form—Wills of married women—Joint tenants—Surrender still required in some cases—The Wills Act—Effect on devises of copyholds—What may be devised—Enrolment of will—Fine to be paid—Estates* pur autre vie*—Wills of infants—Of married women—Effect of Act on relation of*

lord and tenant—Who must be admitted after devise—Power of appointment given to trustees for sale—Provisional admittance—Disclaimer by devisees—Copyholds when conveyed by deed—Equitable estates—Estates of married women—Rights of entry and contingent estates—Release when used—Copyholder's lease—When to be registered.

In this chapter it is intended to discuss the various **methods by which** estates in copyholds are created **and conveyed.** The most important of these modes **of assurance** are Voluntary grants, Surrender and **Admittance,** and Devise of Copyholds: there are also **certain statutory** forms of conveyance appropriate to **particular** cases, and certain occasions on which **interests** in copyholds may be transferred by an ordi**nary deed**; and all these will now be briefly discussed in the order in which they have been mentioned above. Modes of convey-ance.

I.—VOLUNTARY GRANT.

Every lord of a manor for the time being may re-grant copyholds which have come into hand, whether by the lord's acquiring the copyhold or by the tenant acquiring the lordship. And the tenement may remain in hand for any length of time and yet be granted as copyhold again, provided that no common-law estate exceeding a tenancy at will has been created in the land by an owner seised in fee. The act of a limited owner can only suspend the power during the co- Volun-tary grant.

tinuance of his estate (*a*). A conveyance of the manor and demesnes, thongh in fact including the extinguished copyhold, will not affect the power.

The quantity of the lord's interest, so long as it is lawful and in possession, is not material. He may be only a tenant for life or years, or at will, or a guardian or judgment creditor in possession: tenants in dower and by the courtesy may make these grants: and in one case a person who has no legal interest can make them, as where a testator directs his executors to grant out copyholds for the payment of his debts. A person who is otherwise disabled from alienation may make a voluntary grant,. as ecclesiastical persons, married women with their husband's assent, infants, lunatics and idiots, "because the custom of the manor is the basis on which stands the whole fabric of the copyholder's estate, and therefore what custom confirms to a copyholder the law will ever allow, and never seek to avoid it in respect of any such imperfections in the grantor's person" (*b*). But the grant of a tenant by sufferance, or other person who is in by wrong, will be void.

The grant of one joint-tenant of a manor will bind the other, but tenants in common must join in the grant, because they have separate estates (*c*). The

(*a*) *Ex pte Henley*, 29 Beav. 311.

(*b*) Co. Cop. s. 34; Co. Litt. 58 *b.*; *Clarke's Case.* 4 Co. 23. *Rouse's Case.* 4 Co. 24. Vin. Abr. Copyh. G. Com. Dig. Copyh. (C.) 3.

(*c*) *Rouse's Case.* 4 Co. 24.

steward or deputy if properly authorised to do so may make voluntary grants in the name of the lord, and his authority will not be revoked by the subsequent mental incapacity of the lord (*a*). By the Act 4 & 5 Vict. c. 35, s. 87, it is made lawful for every lord or steward, or persons acting as such, to grant copyholds at any time or place, the lands being granted only for such estate as the grantor has authority to make.

When duly made, the grant will bind the inheritance, even if the estate be reversionary and not taking effect in possession during the estate of the person who made the grant.

Any person may take under a voluntary grant who is capable of purchasing land at law; but a husband cannot grant a copyhold to his wife without the intervention of a trustee (*b*).

Upon a voluntary grant no particular form of admittance is necessary, though a formal admittance is generally made in practice. It seems that no act of admission is necessary where, as in voluntary grants in remainder, no delivery of possession is practicable at the time of the grant, and that on the death of the particular tenant the tenant in remainder may enter without any further ceremony (*c*).

II.—Surrender and Admittance.

Surrender and admittance.

The tenancy of a copyhold cannot be transferred

(*a*) In *Blewitt's Case*. Ley. 47. under particular circumstances the steward was directed to take the advice of the committee of a lunatic lord, as to the grant of a copyhold.

(*b*) Co. Cop. s. 35, *Firebrass* v. *Pennent*, 2 Wils. 254.

(*c*) *Roe* v. *Loveless*, 2 B. & A. 453.

entry, contingent, future, and executory interests in copyholds. But the tenant of a vested remainder (unless restrained by custom) can make a valid surrender (*a*).

Persons under disability

Copyholds are subject to the usual rules affecting the dealings with land by persons under disability. An infant cannot, without a special custom (*b*), surrender so as to bind himself, or his heirs if he should die during minority. But his surrender, if clearly beneficial to him or such as he would be compellable to make if of full age, is only voidable, and may be ratified by his act or acquiescence on attaining majority.

Infants.

By the Infants' Settlement Act, 18 & 19 Vict., c. 43, infants may settle their real estate with the sanction of the Court of Chancery; and in many special cases infants, or their guardians, are authorised by statute to sell land for public purposes, as for public works under the Lands Clauses Act and the Defence Acts, for meeting the expense of enclosing commons under the Enclosure Acts, for redeeming the land-tax, for providing churchyards, sites for churches, schools, and other buildings connected with purposes of charity, art, literature, and public instruction (*c*)

Lunatics.

Lunatics, idiots, and persons of unsound mind, are not bound by their conveyance, except where the vendor being apparently a person of sound mind has entered into a contract which is executed before his incapacity is discovered, or where a *bonâ fide* purchaser

(*a*) *Butler* v. *Lightfoot*, 5 Leo. 9.
(*b*) *Naylor* v. *Strode*. 2 Ch. Rep. 392.
(*c*) Dart, V. & P. c. 1.

has dealt with him not knowing of the incapacity (*a*). The committee of a lunatic may sell or lease his settled estates under the provisions of the Leases and Sales of Settled Estates Act under the direction of the Court, and with the like direction may (under the Lunacy Regulations Act) convey in pursuance of a contract made by the lunatic, sell or make exchange or partition of his undivided shares in land, or sell land for building purposes.

Married women.

A married women's estate in copyholds cannot be surrendered without her husband's assent, and without her separate examination by the steward, or (under a special usage) by two tenants or the like; the consent of the husband need not be expressed in the surrender and admittance, unless this is required by the custom (*b*). Under special circumstances the consent of the husband may be dispensed with, and after a judicial separation it will not be required (*c*). The husband's interest in his wife's copyhold, or in a tenement of which they are seised together as tenants by entireties, will be transferred by a separate surrender.

(*a*) *Molton* v. *Camroux*, 4 Exch. 17; *Elliot* v. *Ince*, 7 De G. M. & G. 488, and cases collected in Dart. V. & P. 6.

(*b*) *Shelton* v. *Shelton*, 3 A. & E. 265.

(*c*) *Ex pte Shirley*, 5 Bingh. N. C. 226. See as to the husband's concurrence in ordinary cases *Bullock's Case*, 4 Co. 23, *Driver* v. *Thompson*, 4 Taunt. 294. *Stevens* v. *Tyrrell*, 2 Wils. 1. *George* v. *Jew*, Amb. 629; and *Skipwith's Case*, Mos. 123, where it was said that a custom to dispense with the wife's separate examination, which might be good, does not agree with the latter cases.

Surrender by attorney.

The surrender may be made by attorney (*a*), unless the estate is that of a married woman (*b*) or infant, or unless it is made by special custom to two tenants out of Court or the like (in which case a special custom to surrender by attorney must be proved), or unless there is a custom that surrenders shall only be made by attorney in cases where personal attendance would be impossible or extremely inconvenient. The vendor should surrender in person, if possible, as the purchaser ought not to be forced to rely on a power of attorney which may have become void by the death of the vendor or the subsequent incapacity of the attorney; and in a court of equity he will not be aided unless he surrenders in person, or gives a good reason for doing it by deputy (*c*). If the vendor has covenanted to surrender on request, it is no breach to refuse to authorise an attorney to surrender for him (*d*). The attorney must be regularly appointed by deed, and may be an infant, or married woman, or under any disability, if only of sound mind. The attorney should make the surrender in the usual way, by the rod, or otherwise according to the custom, and either in the name of his principal, or in his own name showing the authority, and stating that the act is done by force of it. If he exceeds his authority, his act will be valid only so far as he was authorised by the principal (*e*).

(*a*) *Combe's Case*, 9 Co. 75.
(*b*) *Graham* v. *Jackson*, 6 Q. B. 811.
(*c*) *Mitchell* v. *Neale*, 2 Ves. 679. *Noel* v. *Weston*, 6 Madd. 50.
(*d*) *Symms* v. *White*, Cro. Car. 299.
(*e*) *Carter* v. *Carter*, 3 K. & J. 617.

The power is revoked by the death of the person who gave it (*a*).

Effect of surrender

The copyholder cannot surrender more than he has in the land, and will not be bound by way of estoppel by his subsequent possession of the estate which he may improperly include in a surrender (*b*). A tenant of an undivided share cannot convey more than his share, a tenant for his life an estate for another man's life, or a husband more than his own interest in the wife's land without her joining in the conveyance.

Uses of surrender

The surrender may be in general words, but it should declare what estate the surrenderee is to take: for a surrender without such a limitation might be held to be a relinquishment to the use of the lord, unless the uses were explained by the subsequent admittance or unless there should be evidence of a resulting trust. It may be made to the use of anyone who could take under a common-law assurance if the land were freehold, and to some others (*c*), as to one who is not capable of taking at the time of surrender, or to an unborn or unascertained person, provided such person is capable of taking at the time of admittance. The surrender may be to the use of the husband or wife, or of the copyholder together with another person,

(*a*) See *Roby* v. *Twelves*. Sty. 423. where a custom is mentioned to give an authority in the nature of a power of attorney to be good after the copyholder's death.

(*b*) *Doe* v. *Tomkyns*, 11 East. 185.

(*c*) Co. Cop. s. 35. *Bunting* v. *Lepingwell*, 4 Co. 29. *Driver* v. *Thompson*. 4 Taunt. 294, as to a wife surrendering to the use of her husband.

between the parties to the conveyance the surrender is the material part of the conveyance, and the surrenderor will hold in trust for the surrenderee: the heir of the latter will inherit, and a right of free-bench or customary curtesy will attach on the estate; (*a*) the title of the surrenderee (after admittance has been made) is taken back to the time of the surrender, so that he may lay his demise in an action of ejectment to recover the copyhold at any time after the surrender, but cannot bring the action before he has been admitted. (*b*).

Before admittance the purchaser cannot surrender, and a subsequent admittance will not make the conveyance valid, so that if an unadmitted purchaser surrenders and the surrenderee be admitted, this will not amount to such an admittance by implication, even if made by the lord himself, as will make the transaction legally valid. As regards the lord, the unadmitted purchaser has an estate in equity, which is descendible to heirs, and deviseable by the Wills Act, 1 Vict. c. 26. An assignee cannot claim admittance, and if admitted must have a release from the original surrenderor. Before the Wills Act, the devisee of an unadmitted devisee could not acquire the legal estate without a fresh conveyance, or an ad-

(*a*) *Benson* v. *Scott*, 1 Salk. 185; *Vaughan* v. *Atkins*, 5 Burr. 2764,

(*b*) *Roe* v. *Hicks*, 2 Wils. 15; *Rex* v. *Dillon*, 1 Freem. 496; *Grantham* v. *Copley*, 2 Wms. S. 422.

mission followed by a release from the persons having the first title to admittance. (*a*).

Voluntary conveyances.

A surrender made for valuable consideration cannot be revoked, and as between the original parties even a voluntary surrender will be binding, though this was formerly doubted: but it has been decided, that copyholds are within the Statute 27 Elis. c. 4, so that a purchaser for value will be preferred to anyone claiming under a voluntary surrender. (*b*). Copyholds were not within the Statute 13 Elis. c. 5. for the protection of creditors, until they were made liable to be taken in execution for judgment debts by the Act 1 & 2 Vict. c. 110. (*c*).

Surrender supplied.

A court of equity will supply the want of a surrender in favour of a purchaser for value or mortgage, when the person agreeing to make the surrender has died before the contract is performed. The contract will be enforced against the heir, widow, devisee, surviving joint-tenant, or life taking in succession after the death of the beneficial owner of a copyhold for lives. But in the case of a voluntary conveyance, the defect in a surrender or the want of a surrender will not be supplied against the customary heir, unless he has done something to prevent the contract being fulfilled. The

(*a*) *Doe* v. *Vernon*, 7 East. 8; *Doe* v. *Tofield*, 11 East. 249 *Phillips* v. *Phillips*, 1 M. & K. 649; *Matthew* v. *Osborne*, 13 C. B. 99.

(*b*) *Smith* v. *Garland*, 2 Mer. 123; *Doe* v. *Bottrell*, 5 B. & A. 131.

(*c*) *Matthews* v. *Feaver*, 2 Cox. 278.

devisee of a purchaser who dies before the conveyance under a contract can insist on the surrender being made to his use (*a*).

Effect of admittance.

When the admittance is made, the estate is held by relation to have been in the surrenderee from the date of the surrender. The operation of the admittance is governed by the limitation of uses in the surrender, the lord or steward having but a bare customary authority to admit according to the surrender. If therefore the surrender is made to the use of one person and another is admitted, the transaction will be of no effect: if the right person and another are admitted together, the admission will enure only to the benefit of the person named in the surrender: where the surrender is conditional and the admittance absolute, the admittance is void; but if a conditional admittance be made on an absolute surrender, the admittance will be held good and the condition disregarded (*b*).

Admittance by attorney.

Admittance may be taken by attorney, who need not be appointed by deed, but may be any person agreed upon by the lord and tenant, or chosen to take the admittance without the copyholder's authority, if he afterwards gives consent. In strict law the lord cannot be compelled to admit by attorney, because he may claim fealty which is a personal duty: but in practice the fealty is almost always respited (*c*). There

(*a*) *Rose* v. *Cunningham*, 11 Ves. 554. Dart. V. and P. c. 7, s. 5.

(*b*) *Taverner's Case*, 4 Co. 27.

(*c*) *Combe's Case*, 9 Co. 75. *Blunt* v. *Clark*, 2 Sid. 61. Gilb. Ten. 236.

are however special provisions by statute for the admittance of married women, infants, and lunatics. By the Act 1 Will. 4, c. 65, s. 3, when a married woman or infant is entitled to be admitted to a copyhold, the married woman by her attorney or the infant by attorney or guardian is to appear at one of the three next courts (proper notice being given) and shall offer to be admitted;—and shall take admittance; such attorney (by s. 4.) may be appointed by a married woman, or infant having no guardian, by writing under her or his hand and seal; and (by s. 5.) in default of such appointment the lord, after proclamations duly made in three courts, may appoint the attorney and make the admittance. By the Lunacy Regulation Act, 16 & 17 Vict. c. 70, the committee of a lunatic may apply for admittance (*a*), and in default the lord may appoint an attorney, under the like provisions as to holding courts and making proclamations.

Admittance compelled.

So long as the lord's rights are not infringed by the proposed admittance, he is compellable to admit any person having a *primâ facie* title to the copyhold, since the admission of itself gives no title, but only gives a right to bring ejectment. But where it is plain that the person claiming admission has no title at all, the admission should not be made (*b*). The

(*a*) The personal estate of a lunatic may be laid out for his benefit in the expenses of admittance. *Ex pte. Grimstone*, 2 Ves. jun. 75. Compare *Degge's Case*, 4 Bro. C.C. 235. *n.*

(*b*) *Garland* v. *Mead*, 6 L. R Q. B. 441.

tion of minerals or timber instead of freehold (*a*). But where an estate was represented to be equal to freehold, it was held that a purchaser was bound to complete although it turned out to be altogether freehold, in the absence of a stipulation that the contract should fail if any part were not of copyhold tenure (*b*). An objection to a difference of tenure will give the purchaser a right to compensation, if from the circumstances of the contract he should be compelled to complete. Objections of this kind will be held to be waived if the purchaser, after discovering the facts, should proceed with the treaty for purchase (*c*). On a sale of copyholds it is not necessary to state the peculiar custom of the manor, or to mention that the lands are subject to the payment of heriots, reliefs, and the like (*d*); but it is expedient to mention at least the fines, as the value of the property depends a good deal on the fact whether the fines are arbitrary or not (*e*).

On the sale of freeholds subject to heriots, which are expressly stated to be held of a manor, the heriots, &c., need not be mentioned, but would be matter for compensation. But in all cases it is better to mention liabilities of this kind.

(*a*) Dart V. & P. 127.

(*b*) *Twining* v. *Morrice*, 2 Bro. C.C. 326. *Daniels* v. *Davison*, 16 Ves. 249.

(*c*) *Fordyce* v. *Ford*, 4 Bro. C.C. 494. But he may be entitled to compensation. *Calcraft* v. *Roebuck*, 1 Ves. jun. 221.

(*d*) 1 Dav. Prec. Conv. 445.

(*e*) Dart V. & P. 107.

In the extensive district comprised in the manor of Taunton Deane in Somersetshire there is a peculiar conveyance known as a Dayne Surrender, which is used when a copyholder alienes his tenement but desires to retain a part for his own life. The purchaser is admitted to the whole of the land (which is called the Dayne Tenement) and pays a fine of one-third of the amount of an ordinary admittance-fine, and further makes himself responsible for the heriot to be paid on the death of the tenant for life. On the death of the surrendor the whole land belongs to the Dayne tenant (*a*). And by a somewhat similar custom in the manor of Yetminster in Dorset, the copyholder for life with power of nominating the successor may surrender to the use of another "excepting" a portion to himself; the surrenderee becomes tenant of the whole, but the original tenant remains in possession of the "excepted tenement," and his widow will have it for freebench (*b*).

Dayne surrender

Excepted tenements.

The mortgage of a copyhold is effected by a covenant to surrender upon condition, the covenants for title being contained in the same deed, followed by a conditional surrender (*c*): the surrender is con-

Mortgage

(*a*) Shillibeere. Customs of Taunton Deane.

(*b*) 2 Watk. Copyh. Appendix. Customs of Yetminster. For a case of a "copy of exception" supplied in equity under particular circumstances, see *Devenish* v. *Baines*, Ch. Pr. 3.

(*c*) Where a mortgagor had neglected to make the surrender within 28 days, after demand and tender of engrossment by the mortgagee, the Court on the petition of the mortgagee made a vesting order under s. 2 of the Trustee Extension Act, 1852,

a tenant or the possession of the land, and this is effectually secured to him by his power of seizing *quousque* upon the death of the tenant, unless the heir or devisee will come in and is admitted" (*a*).

Admittance.

The lord should not admit the heir as against the devisees, when he is clearly not entitled, a regularly executed will being brought to the notice of the lord. But if the devisees present the heir for admittance, to make a saving on the fine, the lord must admit him and be content with having a tenant.

Power of appointment.

In order to save the expense of a double admittance, it is usual to give to trustees for the sale of copyholds a power of appointment to purchasers, instead of making a direct devise to the trustees. The purchaser alone will require to be admitted, and a single fine will be due; and much expense will be saved, if the sale can be made before the lord is entitled to seize *quousque* for want of a tenant. If the sale cannot be effected before the three courts have been held, or the customary period for the vacancy of the tenement has expired, it may save expense in many cases to tender the heir for admittance.

Provisional admittance.

In some places there is a custom of taking "Admittance *Quousque*:" as in a case (*b*), where it was found to be the custom, when a will contained a power of sale, for the heir or some other person to be admitted provisionally, for the purpose of preventing a seizure.

(*a*) *Glass* v. *Richardson*, 2 D. M. & G. 658. *Reg.* v. *Garland*, 5 L.R. Q.B. 269.

(*b*) *Reg.* v. *Corbett*, 22 L.J. Q.B. 335.

The person so admitted took an estate for his life to hold for the intents and purposes, and subject to the powers and declarations and trusts, contained in the will. On the execution of the power by the customary conveyance to a purchaser, which was enrolled, the purchaser became entitled to admission: and if the purchaser should be the same person as the provisional tenant, another admittance-fine would be due, as in every case where a tenant acquires a new interest in the tenement. The custom was also worthy of attention as requiring the lord to take notice of trusts, which is very unusual, as has been already noticed.

Disclaimer by devisees.

If devisees upon trust should at once disclaim effectually, nothing will pass to them, and the heir must be admitted. Disclaimer should be by deed, but may be made by parol, or shown by conduct unequivocally opposed to acceptance of the trust. Where several trustees are appointed, it is better in all cases that all except one should disclaim. If no disclaimer is made in time, the lord may treat them all as tenants, and seize until they pay the fines. But if one of them offers to be admitted, the lord has no right to refuse him for the purpose of compelling the rest to come in.

In a modern case (*a*) four persons were entitled under a will as devisees and executors to real estate, including copyholds, and personalty. Three of them took out probate and assumed the character of executors: but as to the copyholds, two of these three

(*a*) *Wellesley* v. *Withers*, 4 E. & B. 750.

appointed by the court, the estate may be vested by an order in the new trustee and the continuing trustees. Every vesting order has the same effect as if the person entitled to the land had duly conveyed it in the manner appearing in the order.

The court may appoint a person to convey instead of making a vesting order. The following are the provisions of the Trustee Act, 1850 (s. 28) which have special reference to copyholds. "When an order is made vesting any copyhold or customary lands in any person or persons, with the consent of the lord of the manor, then the lands shall, without any surrender or admittance in respect thereof, vest accordingly; and when an order is made appointing a person to convey such lands, it shall be lawful for such person to do all acts and execute all instruments for the purpose of completing the assurance of such lands; and all such acts and instruments so done and executed shall have the same effect, and every lord and lady of a manor and every other person shall, subject to the customs of the manor and the usual payments be equally bound and compellable to make admittance to such lands, and to do all other acts for the purpose of completing the assurance thereof, as if the persons in whose place an appointment shall have been made, being free from any disability, had duly done and executed such acts and instruments." The lord's consent is given in writing, and verified by affidavit in the usual way. "When the trustees had not acted in or accepted the trusts, the order was made without the consent of the

lord, vesting in the new trustees the estate which would have vested in the old trustees, if they had accepted the trusts." (*a*).

When the Court has decreed the sale of any lands, every person bound by the decree or order, who has any estate or right in the land, is deemed to be a trustee within the meaning of the Act of 1850, so as to give the Court power to vest the land in the purchaser. And where the Court decrees any conveyance, the parties to the suit in which the decree is made may be declared to be trustees within the meaning of the Act, and orders made may be accordingly.

When the Court appoints new trustees under these Acts an order may be made vesting the lands subject to the trust in such new trustees, as if a formal conveyance had been made, subject in the case of copyholds to the special provisions above-mentioned.

Copyholds are within the Leases and Sales of Settled Estates Acts (*b*), as has been already mentioned, the Court being empowered to authorise leases and sales of settled estates, when it shall deem that such leases and sales will be proper to be made, having due regard to the rights of persons interested in the settlement. The powers of leasing include powers in the lords of manors in settlement to give licences to their copyholders to grant leases, to the same extent

(*a*) *Paterson* v. *Paterson*, 2 L.R. Eq. 31.

(*b*) 19 & 20 Vict. c. 120; 21 & 22 Vict. c. 77; and 27 & 28 Vict. c. 45. As to these Acts see Dan. Ch. Pr. c. 45, s. 5.

interest in the land or a charge thereon (*a*), unless two-thirds in value of the persons interested shall join in the application (*b*).

The exchange of copyholds requires the lord's consent. The lands may be enfranchised by the order, with the consent of the lord and of the parties interested.

"The land taken upon every such exchange shall be and enure to, for, and upon the same uses, trusts, intents and purposes, and subject to the same conditions, charges and incumbrances, as the lands given on such exchange would have stood limited or been subject to in case such order had not been made" (*c*).

"All hereditaments, corporeal and incorporeal, may now (says Mr. Cooke) (*d*) be exchanged as freely and as easily as a piece of merchandise. These very extensive powers of exchange are altogether new to our law, and titles dependent on the Commissioners' orders of exchange, division, or partition, were at first looked upon with some hesitation. What appeared especially startling was, that the tenure as well as the title passed over with the property of the land exchanged: that the person exchanging retained his old title, his old incumbrances, and his old tenure, changing nothing but the site of his previous property, and this involved the consequence that a piece of freehold

(*a*) *Ibid*, s. 147, and 9 & 10 Vict. c. 70, s. 9.
(*b*) 12 & 13 Vict. c. 83, which extends also to partitions.
(*c*) 8 & 9 Vict. c. 118, s. 147, and 9 & 10 Vict. c. 70, s. 9.
(*d*) Cooke. Inclos. 117.

being exchanged for a piece of copyhold, the copyhold immediately becomes a freehold and the freehold a copyhold."

It must however be remembered that the counterchange of tenure applies only to cases of exchange made by the valuer in the course of an inclosure. In other cases the titles will be exchanged and not the tenure. "If the powers of the Commissioners extended to the exchange of tenures the greatest inconveniences would occur: such inoculations of tenure would be most objectionable" (*a*).

Provisions as to exchange and partition.

The following abstract of the sections of the Inclosure Acts which relate to exchanges and partitions is taken from the forms supplied to applicants from the office of the Inclosure Commissioners. (*b*). The 8 & 9 Vict. c. 118, ss. 147, 149, provides for the form of application, enquiries to be made, confirmation of orders, expenses, &c. and ss. 150, 151, as to notices of exchanges and disputes, and as to expenses. The 9 & 10 Vict. c. 70, ss. 9, 10, authorises exchanges of copyholds, and the consent of the lord being signified by the steward, and by s. 11, undivided shares of land, cattlegates &c. may be exchanged. The 10 & 11 Vict. c. 111. s. 4, enables the Commissioners to reserve minerals, and s. 6, to enfranchise exchanged copy-

(*a*) *Minet* v. *Leman*, 24 L.J. Chy. 545. Relating to an exchange of freehold gavelkind lands for others held in common socage. And see Cooke. Inclos. 119.

(*b*) All the forms and instructions are printed at length in Cooke. Inclos. 507 to 528.

lord. (*a*). On the same principle a penal statute imposing a forfeiture of land will not include customary estates if any part of the forfeiture is taken from the lord, since "an Act is not to be expounded so as to take away the interest of an innocent person." (*b*). The Statute 12 Car. 2, c. 24, so far as it permits fathers to appoint guardians for their children, seems to apply to copyholds except in those places where the lord has by custom the right of appointing the guardian. (*c*).

Acts extended to copyholders.

When an Act will benefit the copyholder and not prejudice the lord, it may "by a benign interpretation" be extended to copyholds, even if it be in terms suitable to freeholds only or be merely declaratory of the law. Thus the Statute of Merton, 20 Henry 3 c. 1, giving certain remedies for dower to widows was extended to give analogous remedies in the manor-court to widows claiming their freebench: and so with all the incidents of customary estates-tail, which were very soon brought within the equity of the Statute *De Donis*. Copyholders were allowed the benefit of 32 Hen. 8 c. 34 by which assignees of a reversion may sue on the covenants running with the land, "because it was a remedial law and no prejudice arose to the lord."(*d*) And in the same way general statutes

(*a*) *Dimes* v. *Grand Junction Canal*, 9 Q.B. 469; 3 H.L.C. 794.
(*b*) *York* v. *Marsham*, Hard. 432.
(*c*) 2 Watk. Copyh. 104.
(*d*) *Glover* v. *Cope*, 4 Co. 80; 1 Salk. 185. *Whitton* v. *Peacock* 3 Myl. & K. 325.

made for the public advantage will be extended to copyholders, though only freeholders are named, as the Statutes of Merton (20 Hen. 3. c. 3.) and 13 Edw. 1. c. 46. relating to enclosures of wastes by the owners, leaving sufficient for the commoners(*a*). The provisions of the Stamp Act, 1870, are applicable to conveyances of copyholds made after its date(*b*).

(*a*) *Shakespeare* v. *Peppin*, 6 T.R. 747. *Grant* v. *Gunner*, 1 Taunt. 435.

(*b*) The Act applies only to instruments made after its date. For the earlier regulations, see Dart. V. & P. c. 6. An abstract of the principal provisions of the late Act, so far as it relates to copyholds, will be found in the Appendix.

collateral in each degree (*a*), and customs which extend the descent of the youngest to females as well as males (*b*), in some cases to daughters alone, and in others to sisters, aunts, or collaterals of every degree.

5. There may be also special customs of a more restricted nature than the general custom of borough-tnglish, of which the most important are those which restrain the custom to the case of a tenant dying seised. In an important case (*c*), where the copyhold lands of every tenant dying seised were descendible to the youngest son, a surrender was made to the use of B. and his heirs, who died before admittance. "It was agreed, that if B. had been admitted the youngest son after his death should have inherited: but, in regard B. died before admittance, the question was between the eldest and youngest son of B., and it was adjudged that in this case the eldest son should have the land because of the strictness of the custom, there never having been any seisin in the ancestor." In the

said to be found in the same county in the manors of Abinger, Brookham, Little Brockham, Colley, Compton Westbury, Cranley, Dunsford, Grimshall Netley and Towerhill, Shere Vachery and Eborum, Sutton, Paddington, and Paddington Pembroke, see Robinson. Gav. App.

(*a*) As at Ealing, Isleworth, Acton, &c. in Middlesex, and elsewhere, see *Rider* v. *Wood*, 1 K. & J. 644, 24 L.J. Chy. 737.

(*b*) This extension of the custom prevails in manors near London, as the manors of Fulham, Putney, Sheen, Mortlake, Battersea, Wimbledon, Wandsworth, Down, Barnes, Richmond, &c. and elsewhere. See Real Prop. Comm. 1 Rep. App. and Tenures of Kent, c. 7; Rob. Gav. App.

(*c*) *Hale's Case*, 2 Sid. 61, S.C. as *Paine* v. *Herbert*, 2 Keb. 158, and *Fane* v. *Barr*, cited 6 Mod. 121. see last page. note *b*.

much-discussed case of *Muggleton* v. *Barnett* (*a*), it was argued that the Inheritance Act had deprived a custom of this kind of its significance, the person last seised being no longer the root of descent in any case: but the strict interpretation of the custom was upheld. In that case the custom was, "that the land should descend to the youngest son of the person last seised, if he had more than one son, and if no son, to the daughters as parceners: and if no issue, then to the youngest brother of the person last seised and to the youngest son of such youngest brother." Or there may be restrictions of other kinds, as that fee-simple lands should go to the youngest son, and entailed lands to the eldest (*b*); or that the special custom shall only affect lands of a certain value, as above mentioned; or that it shall only extend to certain copyholds in a manor, or to certain lands under particular circumstances (*c*).

Customs as to descent among females.

6. Other local customs give a preference in default of sons to the eldest daughter, and sometimes to the youngest. In the same way the eldest or youngest daughter may be preferred in the claim to a renewal of a customary freehold for lives (*d*). In some manors

(*c*) 2 H. & N. 653; see Williams Real. Prop. App. A.

(*a*) *Chapman* v. *Chapman*, March, 54. 7 Vin. Abr. 561. Co. Litt. 140, *b*.

(*b*) *Kempe* v. *Carter*, 1 Lev. 56. 7 Vin. Abr. 190. Compare the customs of Mayfield and Framfield in Sussex, 2 Watk. Copyh. App. 5, 6.

(*c*) Co. Litt. 140, *b*. See the Customs of Cheltenham, under the Act of 1 Car. 1; 2 Watk. Copyh. App. 9.

(*d*) *Doe* v. *Clift*, 12 A. & E. 506.

Who is eldest or youngest customary heir.

In the case of *Reeve* v. *Malster* (*a*) a reversion descended to the youngest of three sons who died before the tenant for life, without issue. When the reversion came into possession, the question was whether W. the eldest son and heir at law or G. the second son should have the land. There was no special extension of the custom of borough-english to brothers. Two judges thought that the middle son should have it by descent from his father, who had the seisin of the freehold. "But Jones J. and Croke J. held that W. had the better title, for in this case the youngest son being the heir in whom it vested by custom at the death of his father, it is an inheritance fixed in him, and the custom has its operation and is satisfied in him, and there is an end of the custom, and none can claim after but his heir: and the youngest son only, who is *in esse* at the death of his father, shall have it by the custom, and not any other who shall come to be youngest afterwards." But the former opinion has prevailed in later cases.(*b*) In the same case it was stated that a posthumous son would not be allowed to claim as heir in borough-english so as to divest of the inheritance the son who entered as the youngest at the death of his father: but this opinion has not been followed.

The case of *Newton* v. *Shafto* (*c*) illustrates the same principle. "The custom of the manor of Tynemouth is that, if a copyholder dies leaving no son but two or more daughters, the eldest daughter shall have it only

(*a*) Cro. Car. 410.
(*b*) *Clements* v. *Scudamore*, 6 Mod. 121.
(*c*) 1 Lev. 172, 1 Sid. 167, Rob. Gav. Append.

for her life, and then it shall descend to the next heir male, and that the wife shall have it (for her freebench) for life. A copyholder died and his wife entered: the elder daughter died in the wife's lifetime, and then the wife died: the Court held the custom good, and that the second daughter should have the land for her life within the custom, for though she was not eldest daughter at the death of her father, yet she was at her mother's death, whose estate was a continuance of the husband's estate till her death."

Statutes of distribution.

Before leaving this part of the subject it may be expedient to mention the case of *Lutwyche* v. *Lutwyche*, (*a*) which decided that a youngest son, being heir in borough-english of certain lands, should not be obliged to bring the borough-english lands into hotchpot before claiming his distributive share of the personal estate of his father, who had died intestate.

Effect of Inheritance Act

We may now consider the alterations which have been introduced into the customs of special descent by the Inheritance Act, 3 & 4 Will. 4, c. 106, which applies to all descents and titles to inherit by reason of consanguinity arising after the 1st January, 1834 (*b*).

"Last seised.

Before the Act the descent was in all cases to be traced from the person last seised, *i.e.*, who was in possession by himself or his tenant for years, or in the

(*a*) Ca. temp. Talbot, 276, reversing the case of *Pratt* v. *Pratt*, Rob. Gav. Append.

(*b*) With an exception as to the effect of assurances made before that date, and the wills of persons dying before that date. 3 & 4 Will. 4, c. 106, s. 12.

estate has descended to different persons, the freeholds to the eldest son, and the copyholds to the customary heir: and generally, from the greater likelihood of long minorities, additions to the number of trustees and *cestui-que-trusts* on the same property, uncertainties respecting boundaries and customs, &c. land subject to special customs of descent, whether freehold or copyhold, is often rendered difficult to sell or to manage properly" (*a*).

Estate of the heir before admittance.

Upon the death of a copyholder intestate the heir immediately becomes the tenant, and may act as owner, as against all the world except the lord, before he has been admitted. "Admittances upon surrender (says Lord Coke) (*b*) differ from admittances upon descents in this, that in the former nothing is vested in the grantee before admittance no more than in voluntary admittances: but in admittances upon descents the heir is tenant by copy immediately upon the death of his ancestor, but not to all intents and purposes, for peradventure he cannot be sworn of the homage before nor maintain a plaint in the nature of an assise (*c*) in the lord's court before, because til then he is not complete tenant to the lord, no further than the lord pleases to allow him for his tenant. So that to all intents and purposes the heir, till ad-

(*a*) See the evidence to the same effect in the Appendix to the same Report. pp. 254, 286,

(*b*) Co. Copyh. s. 41, *Brown's Case.* 4 Co. 22, *Clarke* v. *Pennifather*, 4 Co. 23.

(*c*) Abolished by the Act 3 & 4 Will. 4, c. 27.

mittance, is not complete tenant, yet to most intents, especially as to strangers, the law takes notice of him as of a perfect tenant instantly upon the death of his ancestor: for he may enter on the land before admittance, take the profits, punish any trespass done upon the ground, surrender into the hands of the lord to whose use he pleases (satisfying the lord his fine due upon the descent), and by estoppel he may prejudice himself of his inheritance" (*a*).

As against all persons but the lord the unadmitted heir may bring ejectment (*b*) or trespass, and after admittance may bring trespass against the lord for acts done before the admittance (*c*). He may make a customary lease (*d*) for the period warranted by the custom, and generally act as owner, except as against the lord: "if he dies before admittance his heir shall enter and take the profits, and shall have trespass before his admission:" (*e*) and in the like case his widow will have her freebench, and the husband of an heiress dying before admission will have his customary estate by the curtesy (*f*). "So that I conclude (says

(*a*) In no other case can a person who is not in the customary seisin bind his future estate by way of estoppel. *Doe* v. *Tomkins*, 11 East. 185. So an expectant heir cannot surrender. *Goodtitle* v. *Morse*, 3 T.R. 365.

(*b*) This does not apply it seems to the heir inheriting the tenant-right of renewal in a customary freehold which is granted for the joint lives of the tenant and the admitting lord. *Doe* v. *Thompson*, 18 Q.B. 670.

(*c*) *Barnett* v. *Guildford*, 11 Exch. 19.

(*d*) *Bullock* v. *Dibler*, Moore, 596.

(*e*) *Clark* v. *Pennifather*, 4 Co. 23.

(*f*) *Ibid.*

CHAPTER VI.

INCIDENTS OF COPYHOLD ESTATES.

Incidents which usually attach to copyholds—Freebench—Curtesy—1. *Freebench distinguished from dower—And from customary dower in freeholds—Freebench in commuted copyholds—Assignment how made—Duration of widow's estate—Quantity of land to be taken—To what tenements freebench extends—Where due from lands of which husband died tenant—Where of all his lands during marriage—Inchoate right of freebench—Widow's estate in joint-tenancies for lives—In other copyholds for lives—Not in equitable estate—Widow of unadmitted heir or purchaser—Effect of subsequent admittance—Widow to be admitted—Widow's rights and remedies—Freebench how barred—Jointure—Surrender by wife—Alienation by husband*—2. *Curtesy—How different from curtesy at law—Of what tenements—Quantity—How barred. Husband's claim to fee-simple by custom—Claim*

of husband by adverse possession—Curtesy in gavelkind freeholds—Other customary varieties—In commuted copyholds—Other incidents of copyholds—3. *Guardianship—Of guardian in socage—Of lord by custom—Duties of guardian—Customary guardianship in freeholds*—4. *Lord's fines. On admittance—On alienation—Classification of fines—Case of* Somerset *v.* France—*General fine—Dropping fines—Admittance fines—Certain or arbitrary—When certain—Fine of tenants with right of renewal—Amount of arbitrary fine—When discretionary—When reasonable—What is reasonable in various cases—When fine is only on first purchase—Similar case—Case of lives taking in remainder—Of joint-tenants—Fine due on change in tenancy—Various examples—When due for freebench or curtesy—For estates in remainder—Fines due for separate tenements—What are separate tenements—Reunion of estates held in common—Fine when due—On admittance—Principle of contribution—Lord's remedies in default of payment—When a fine is not due—Various examples.* 5. *Fealty and suit of court—When due—From whom*—6. *Heriots—Heriot-service—Suit-heriot—Heriot-custom—Its nature—Various examples—When not due—When multiplied—In case of copyholds—In case of freeholds—Effect of confusion of boundaries*—7. *Customary reliefs—Their nature. When due*—8. *Rents of copyholders—Not to be increased—Commutation of rents and services—*

Free-bench how barred.

The widow's claim to freebench may be barred in various ways: as by jointure, whether expressed to be in bar of freebench as well as dower, or not:(*a*) though it ought properly to be expressly stated as being in full satisfaction of all dower, freebench, and thirds. If she were an infant when married, she will have an election between the jointure and her freebench, though it is otherwise in the case of freeholds.(*b*) If the jointure be post-nuptial, she will have her election, as with her dower in a similiar case. Freebench may be barred by jointure even in manors where the widow is entitled in respect of all lands of which the husband was tenant at any time during the marriage.(*b*) In the same manors the wife's incipient right of freebench may be destroyed by a surrender to uses to bar freebench, though the lord would not be compelled to accept any surrender giving powers of appointment which might deprive him of his future fines, as has already been explained. If the admittance of the purchaser be in fee, the limitation of uses to bar freebench in the surrender will be ineffectual.(*c*) In these manors it is necessary for the wife to join in a conveyance of land by the husband, or to surrender after separate examination

the case where a lessee has sowed the land, *ibid*; see 14 & 15 Vict. c. 25, which allows lessees at rack-rent to remain to the end of the current year in lieu of a claim to emblements.

(*a*) Co. Litt. 36, *b*. *Walker* v. *Walker*, 1 Ves. 54.

(*b*) 1 Roper 476. *Buckingham* v. *Drury*, 3 Bro. P.C. 492; Cru. Dig. tit. 7, 1, 32.

(*c*) *Powdrell* v. *Jones*, 24 L.J. Chy. 123.

by the steward to the purchaser either before or after the husband's conveyance, "technical reasoning having been somewhat disregarded by the courts when applied to the object of preventing property being alienable on account of a wife's right of freebench (*a*). Or after the purchaser's admittance the wife may release her right by deed. Every right of freebench, when it has accrued, may be released to the tenant in possession, or the widow may be admitted and surrender to his use.

In the more usual case, where freebench can only be claimed out of the lands of which the husband died in possession, any alienation made by him during his life will be preferred to the widow's claim, and she will be defeated in equity by his contract to alienate the land. Thus she will be postponed to a lessee or mortgagee, and will take subject to all other estates created by the husband. Any determination of his estate will have the same effect as a conveyance made by him, and the widow's claim will be defeated by his bankruptcy or forfeiture, or by the enfranchisement of his estate or extinguishment of the copyhold tenure.

2. *Customary Curtesy.*

Curtesy.

This differs in several respects from an estate by the curtesy in freeholds, where the husband holds for his

(*a*) *Wood* v. *Lambirth*, 1 Phill. 8. By the customs of some manors she can defeat her freebench only by surrender. *Powdrell* v. *Jones*, 24 L. J. Chy. 123.

life the lands of which his wife was actually seised for a legal or equitable estate of inheritance, provided he has had issue by her born alive during the marriage and capable of inheriting the estate. The husband has no such estate in his wife's copyholds, except by special custom; and the custom determines in each case whether he is to hold for his life, or to lose the land upon a second marriage; whether the birth of issue is a necessary condition, or not; and whether the right may be claimed in the wife's equitable estate.

Of what tenements.

But in general the custom is confined to the case of the woman being the legal tenant at the time of her death; though even in this case, if the woman had a legal estate against all the world except the lord, being entitled by descent or surrender before admittance, the husband will not be prejudiced by the non-admittance of the wife.(*a*) The custom is taken strictly; so that, under a custom that where a man marries a customary tenant he shall have curtesy, it has been held that the woman must be a copyholder at the time of the marriage, to entitle the husband to claim (*b*).

The customary curtesy is not necessarily confined to the wife's copyholds of inheritance, the husband being entitled by the customs of a great number of manors to the copyholds for lives held by his wife, as a continuance of her estate.

(*a*) *Ever* v. *Aston*, Moo. 271; *Vaughan* v. *Atkins*, 5 Burr. 2785.

(*b*) *Savage's case*, 2 Leon. 109, but see *Clements* v. *Scudamore* 1 P. Wms. 63, where the authority of this case is denied, and Gilb. Ten. 326.

Quantity.

The quantity of the husband's estate differs according to the particular custom, being in some places the whole of the wife's land, and elsewhere a moiety, or a third, or some other fraction. When he is to take the whole, his estate (as with freebench under similar circumstances) is perfect without admittance, as against everyone but the lord, being a continuance of the wife's estate. Where he is entitled to a portion, it is said that he cannot enter without assignment (*a*): it does not however seem to be clear why he should not hold in common with the heir without any assignment, as has always been usual in the case of customary curtesy of freehold gavelkind lands.

How barred.

The husband's inchoate right may be extinguished by his joining in the wife's conveyance, or by the extinguishment of the copyhold tenure or enfranchisement of the tenement, or by the wife's forfeiture. And in equity his right will be excluded by an express declaration that the land shall be free from his claim (*b*).

Fee-simple by custom.

By the custom of Taunton Deane, and formerly by some other customs, the husband if duly admitted in the wife's lifetime will inherit the fee-simple of the copyholds of which she died actually in possession (*c*).

Claim by adverse possession.

In a case where the husband of a deceased copyholder has a good customary title to hold as tenant

(*a*) 2 Watk. Copyh. 103, who is followed by Scriven.

(*b*) *Bennett* v. *Davis*, 2 P. Wms. 316.

(*c*) *Newton* v. *Shafto*, 2 Keb. 158; *Compton* v. *Collinson*, 1 H. Bl. 343. Shillibeer. Customs of Taunton Deane.

by the curtesy, his possession after the wife's death was referred to that title, and his heir was not allowed to set up an adverse title under the Statutes of Limitation, as against the heir of the wife claiming within twenty years after the husband's death; even though the husband was admitted after the wife's death to hold to the uses of a settlement which gave the estate to the survivor of them in fee (*a*).

Gavelkind lands.

By the custom of Kent, the husband is tenant by the curtesy of a moiety of his wife's gavelkind tenements, whether issue were born or not, and loses his estate by a second marriage; and in freehold lands of the tenure of burgage and ancient demesne there are other customary varieties of the husband's tenancy by the curtesy.

Commuted copyholds.

When copyholds have had the services commuted under the Act of 1841, they become liable to the ordinary law of curtesy applicable to freeholds, although the copyhold tenure remains (*b*).

Among other incidents of a copyhold estate which now require consideration are guardianship, fines on admittance and alienation, customary reliefs and heriots, and other payments and services, which will now be mentioned in order.

3. *Guardianship.*

Guardianship.

The guardianship of an infant heir of copyholds belongs in the absence of custom to the guardian in

(*a*) *Doe* v. *Brightwen*, 10 East 583
(*b*) 4 & 5 Vict. c. 35, s. 79.

socage, or nearest of kin to whom the land cannot descend. Guardianship in socage cannot properly arise unless the infant is entitled by descent to freehold lands; where it arises, it extends not only to the infant's person and socage estates, but also to his copyholds, unless there is a special custom for the lord to appoint a guardian (*a*). Where there is no descent of freeholds to the infant, the same person will be guardian by custom (unless the lord has the wardship) as would have been guardian by socage, if the land were freehold.

Lord claiming by custom

By the special custom of a manor the lord may be the guardian, and appoint the custody of the estate to his bailiff, or may nominate the guardian, or otherwise dispose of the land according to the custom of the manor (*b*), and where the lord has this privilege, the father will not have the statutory power (*c*) of appointing a guardian by testament.

Duties of guardian.

The guardian himself is not admitted except as representing the infant, and can do no personal services, as fealty or suit of court, but will manage the land and account for the profits; and he will pay the rents and dues to the lord. His leases will determine at the close of the guardianship, unless ratified by the infant. This species of guardianship ends when the infant attains the age of fourteen years,

(*a*) Co. Litt. 88, *b*. Harg. n. 13

(*b*) Com. Dig. Copyh. K. 5.

(*c*) 12 Car. 2, c. 24. *Church* v. *Cudmore*, 2 Lutw. 1181; 3 Lev. 395.

unless another age is prescribed by the custom; and at its termination the infant by custom may choose another guardian (*a*). By the statute 1 Will. 4, c. 65, enacted in place of 9 Geo. 1, c. 29, the lord may appoint a guardian for an infant who does not come for admittance, for the purpose of such admittance and the payment of the fine; and the guardian so appointed may reimburse himself his expenses and the amount of such fines, notwithstanding the infant's death, in the manner provided by the Act.

Guardianship by custom in freeholds

Guardianship by custom is found in certain freehold lands, as by the customs of burgage tenements in various cities and boroughs, and by the custom of London (now disused in this respect) giving the guardianship of orphans to the corporation. Guardianship by custom may also be found in freehold lands of ancient demesne tenure, and in gavelkind lands in Kent, where the infant is in ward until the age of fifteen (*b*). In the case of freehold lands the customary varieties of guardianship have ceased to be of importance (*c*).

4. *The Lord's Fine.*

Fines.

Upon the admittance of a new tenant a fine is

(*a*) Kitch. 202.

(*b*) For an account of guardianship in gavelkind, see Rob. Gav. ii. c. 3. Lamb. Peramb. 563; Tenures of Kent 79. The guardianship of orphans in London lasted in the case of males till the age of 21 years, in the case of females till the age of 18 years or marriage. Macph. Infants, 48. 7 Vin. Abr. Customs of London.

(*c*) On the whole subject of guardianship, see Co. Litt. 88, *b.* and notes by Hargreave.

in general due to the lord as a consideration for the admittance; but in some manors no fine is due for admittances upon descents, or for the admittance of a widow or widower to the land taken as freebench or customary estate by the curtesy. In some manors a small fine is payable upon alienation of any part of the tenement by surrender, or under licence to demise or alienate, when by the custom the lord is obliged to grant the desired permission.

Classification of fines.

Fines payable to the lord by the copyholder have been divided into three classes (*a*), the first being due upon the death of the lord, the second on the change of the tenant, and the third for licence to empower the tenant to alienate, to demise for more than one year, and the like. And so Coke writes: "of fines due to the lord by the copyholder, some be by the change or alteration of the lord and some by the change or alteration of the tenant; the change of the lord ought to be by the act of God, otherwise no fine can be due; but by the change of the tenant, either by the act of God or the act of the party, a fine may be due to the lord" (*b*). And "by special custom copyholders are to pay fines upon licences granted unto them to demise by indenture, but by general custom they are to pay fines only upon admittance (*c*).

(*a*) 1 Watk. Copyh. c. 7.

(*b*) Co. Litt. 59, *b*. "Upon the change or alteration of the tenant a fine is due." *ibid.* See *Bath (Earl of)* v. *Abney*, 1 Burr. 206.

(*c*) Co. Cop. s. 56. As to alienation-fines, see *Holland* v. *Lancaster*, 2 Vent. 134.

This is not a very convenient classification, the fines due upon a lord's death being in fact due by reason of a change in the tenancy, where the copyhold is held by the custom of tenant-right for the joint lives of the copyholder and of the lord who grants admittance, the copyholder having a tenant-right of renewal and fresh admittance. "By the custom of many manors in the North a fine is due on the death of the last admitting lord, whether he was in possession of the manor at the time of his death or not; and this has been held good by the House of Lords." (*a*). In the case of *Somerset* v. *France*, (*b*) the custom was stated for the lord or lady of the manor for the time being to admit the tenants to their respective estates, such admittances giving them a right to hold the estates during the joint lives of such admitting lord or lady; and that in consideration of such admittance they were used to pay a general fine to the next succeeding lord upon the death of the last admitting lord, which caused a general determination of the estates. The admitting lady having died, her husband, as tenant for life in remainder under a settlement, claimed the general fine, which was refused by the tenants on the ground that he would not be entitled to it under the custom as tenant by the curtesy, and could not be put into a better position by the settlement, because that would be giving the lords a

General fines.

(*a*) *Lowther* v. *Raw*, 2 Bro. P.C. 451; Cru. Dig. tit. 10, 4, 26.
(*b*) 1 Stra. 654; Cru. Dig. tit. 10, 4, 24.

power to oppress the tenants by a multitude of fines, which the law will always prevent. But it was found by verdict, (an issue at law having been directed), that the general fine was due, and the tenants were decreed to pay. "It appeared (said Lord King,) from the nature of the admittances, that upon the death of the last admitting lord all the estates of the tenants, which were held under his admittances, were determined; and their estates being so determined, it was necessary for the tenants, before they could have any new estate, to have a regrant from the succeeding and next admitting lord, to which regrant they had a right, and that right gave their estate the denomination of tenant-right estates. Hence it appeared that the fines were paid upon account of the admission to the new estate; and therefore that the lord who had a right to admit, had a right to the fines. The lord granted the tenant a new estate; in consideration of that, a fine became due to him from the tenant. The only question then seemed to be, whether the lord had a right to admit, and the tenants seemed to agree that he had; for they allowed that if a particular tenant died, the lord upon the admission of his heir was entitled to a "dropping fine"; nor could he be entitled to his "dropping fine" if he was not the admitting lord.

"If he had power to admit, and had a right to a fine upon the determination of a particular estate, upon the death of a particular tenant, why had he not an equal power to admit, and an equal right to his fines

having been filled up) was unreasonable, and that the principle of assessment should be to charge half as much for the second as for the first, half as much for the third as for the second, and so on in a descending series, approaching but never reaching a total of four years' value; and it was held that, under the circumstances of the case, a deduction should be made on account of the right to take the new fine on the death of nine out of the fourteen lives instead of at the death of the last survivor. Evidence was given on one of the trials, which is cited by Serg. Scriven, in his account of the case, to the effect "that, if copyhold premises be held on a single life of 30 years, the interest in them would last on an average 28 years; that if one life aged 30 would be worth on renewal £2,000, then two lives of the same age would be worth £2,430, and three such lives £2,608, and that the addition of any further number could not exceed £3,000. That if £2,000, was a reasonable fine on the admission of one life, the admission of fourteen of the several ages of the defendants, to be renewed when reduced to five, would be £2,111. And that the interest in fourteen lives, which are to be surrendered and re-admitted when reduced to five, is not so valuable as the interest in nine lives absolute."

Fines due on change of tenants.

As to the persons from whom a fine is due, the general rule is that a fine is to be paid upon every change in the tenancy.

If therefore a copyholder in fee dies, a fine is due from the heir, and so in the case of the heir of a

copyholder with right of renewal, or the successor nominated by custom; and the death of the heir will not deprive the lord of his right. If the surrenderee dies before admittance his heir must pay two fines. The devisee of an unadmitted testator must in the same way (by the Wills Act. 1 Vict. c. 26, s. 4,) pay the fine which would have been due had the testator been admitted, and had then surrendered to the use of his will and devised. Where a testator died before admittance his devisee had to pay two fines, notwithstanding that the copyhold was held in trust and that the lord had admitted some of the *cestui-que-trusts*, who had paid customary fines (*a*). On every devise of copyholds (including as will be remembered, all customary and tenant-right estates) the devisee is to pay the same fine as would have been due from the customary heir. A person who acquires a copyhold as special occupant must pay the same fine as a purchaser, a due deduction being made in respect of the expectation of life of the *cestui-que-vie* (*b*) and this applies to the representatives of an intestate tenant *pur autre vie* taking his estate under the provisions of the Wills Act. The executor of a copyholder for years pays a fine upon admittance, because there is a change of the tenant (*c*). Coparceners make but one heir, and are entitled to be admitted on one fine (*d*). But if a coparcener dies, and the other

(*a*) *Londesborough* v. *Foster*. 3 B. & S. 805.
(*b*) Gilb. Ten. 327.
(*c*) *Bath* (*Earl*) v. *Abney*, 1 Burr. 207.
(*d*) *Reg* v. *Bonsall*, 3 B. & C. 173.

When payable.

Where a fine is certain the tenant is bound to pay it immediately after admittance, but if it is uncertain he will be allowed a reasonable time for meeting the lord's demand. "The lord may bring an action of debt against a copyholder for the recovery of the fine: but if a copyholder in fee dies, and his heir waives the possession, the lord cannot bring an action against him for the fine, but may seize the copyhold. If a copyholder is admitted, and before payment of the fine the lord dies, and the manor descends on his heir who also dies, the executor of the heir may maintain an action of *assumpsit* against the copyholder to recover the fine, whether it be certain or at the will of the lord" (*a*). And the lord may recover the fine assessed on admittance, though there is no entry of the assessment on the court-rolls, but only a demand of such a sum for a fine after the value of the tenement has been found by the homage (*b*). When the fine is recovered by the lord under the Act 1 Will. 4, c. 65. in the case of an infant or married woman, or under the Lunacy Regulation Acts in the case of a lunatic, the lord is restricted to his statutory remedies. The lord is not bound to identify the lands in respect of which the fine is due (*c*); but if he claims quit-rents or heriots he must show the particular tenements (*d*).

Lord's remedies.

(*a*) Cru. Dig. tit. 10, 4, 41. *Shuttleworth* v. *Garnett*, 3 Mod. 140.

(*b*) *Northwick* v. *Stanway*, 6 East. 56.

(*c*) *North* v. *Strafford*, 3 P.W. 151.

(*d*) *Basingstoke* (*Mayor*) v. *Bolton*, 3 Drew. 50.

When fine is not due.

A covenant to surrender a copyhold, though presented by the homage, does not entitle the lord to any fine, and the assignee of the benefit of the covenant has a right to be admitted upon payment of a single fine (*a*). A covenant to surrender and to do all acts for perfectly surrendering and assuring the estate to the purchaser is not broken by non-payment of the fine on admission, because it is due only after the purchaser's admittance, as has before been mentioned (*b*). A husband is not obliged to be admitted, or to pay a fine, in respect of his wife's estate in fee or other estate (*c*). On a release by one joint-tenant or one coparcener to another, or by a person having a right in the land to the tenant in possession, no fine is due. An entry by the steward in his books of the admission of a surrenderee is a mere memorandum and does not entitle the lord to a fine (*d*); nor will the acceptance of rent by the steward from a surrenderee, or any other act of admittance, unless he has authority to make the admittance, operate to admit the surrenderee or make him liable to the fine (*e*). No fine is due from a trustee who has disclaimed before acting in the trusts of a devise of copyholds. On the execution of a conveyance under the Lands Clauses Acts by a copyholder to a company empowered to take land, no

(*a*) *Rex* v. *Hendon*, 2 T.R. 484. *Garland* v. *Jekyll*, 2 Bing. 273.

(*b*) *Ante*, p. 78. *Graham* v. *Sime*, 1 East. 632.

(*c*) Co. Cop. s. 56.

(*d*) *Hayward* v. *Raw*, C.H. & N. 308.

(*e*) *Rawlinson* v. *Green*, Poph. 127; 3 Buls. 237.

entire; and if the tenant purchases the land again, yet if I were seised of the heriot by the other man, I shall have of him for each portion a heriot" (*a*). It was held that, where a copyhold was devised to two persons in common, the owner of each portion was liable to a separate heriot and fine, and that if one surrendered to the use of the other, the tenements remained separate. For if land held by an indivisible service is separated, and afterwards united, the services would continue to be payable, not as for one tenement, but for each portion, for they would not again become one tenement in respect of the lord (*b*); and that this doctrine was as applicable to estates held in common as those in severalty.

In the case of *Garland* v. *Jekyll*, (*c*) (which was a copyhold case) it was held that there was no rule for paying the multiplied heriots after the reunion of the divided estate. In the particular case before the court the estate had been held in undivided shares by tenants in common.

(*a*) Fitzh. Abr. Heriot. 1; or as cited by Comyn. "If tenant by heriot-service aliens parcel, the heriot shall be multiplied, and if the lord be seised of a heriot by the alienee, it shall continue, though the tenant repurchase this parcel." Com. Dig. Copyh. K. 19. See *Holloway* v. *Berkeley*, 6 B. & C. 2. The case is said to have been decided in 34 Edw. 3; a year for which there are no reports in the printed year-books. In *Garland* v. *Jekyll*, 2 Bing. 273, Best Ch. J. entirely denied this authority, observing that there must be some great mistake about it, and that perhaps it was a decision Nisi at Prius; see however *Holloway* v. *Berkeley*, *supra*.

(*b*) *Bruerton's Case*, 6 Co. 1. *Talbot's Case*, 8 Co. 105. *Lofield's Case*, 10 Co. 107.

(*c*) 2 Bing. 273.

The case of *Holloway* v. *Berkeley*, (*a*) still further broke down the rule established by *Attree* v. *Scutt*. It was held that the creation of a tenancy in common, until a severance is made, does not destroy the unity of the tenement, so that the heriots will not in such a case be multiplied. "The authority from Fitzherbert, is the case not of the creation of a tenancy in common, but of a severance of the estate into distinct parcels, and the alienation of one of those parcels of his land to others. It does not appear from Fitzherbert whether that was the case of a copyhold or a freehold tenement (*b*), but it has been frequently noticed in subsequent cases, and it is a relief to us not to be called upon to impeach it. Whether it be a right or a wrong decision we consider to be a matter still open for discussion."

As regards freeholds held by an ancient tenure, with heriot-service forming part of the rent, it would seem that the heriot would be multiplied upon alienation. If B. holds of A. by such a tenure, and alienes part of his land to C. in fee, C. will no doubt hold of A. by the same services as were due from B. by force of the statute *Quia Emptores*, 18 Edw. 1. And the *dictum* of Fitzherbert might well apply to such a case. So if a heriot be reserved upon a modern tenancy of freehold lands, it will be in the nature of a rent issuing

(*a*) 6 B. & C. 2.

(*b*) But see Comyn. Dig. Copyh. K. 19. And it must be remembered, that at the date of the case cited by Fitzherbert copyholders could not make alienations of their lands.

any rent shall be deemed to have first accrued, if the person claiming or the person through whom he claims, shall in respect of the estate or interest claimed have been in receipt of such rent, and shall while entitled thereto have discontinued such receipt, at the time of the discontinuance of possession or at the last time at which the rent was so received: and if he claims under a conveyance from the person who was in receipt of the rent, and no one shall have been in receipt of the rent under the conveyance, then the right to bring the action shall be deemed to have first accrued when the person claiming, or the person through whom he claims, became entitled to such receipt under the conveyance, with other provisions relating to grants of estates and interests in expectancy, and titles under a forfeiture or breach of condition.

The Act does not apply to rents reserved upon leases for years, but only to those which can exist as inheritances distinct from the land (as the copyholders' rents above-mentioned) for which before the Act the person claiming might have had an assise or possessory action.

On claims to heriots &c.

Difficulties have arisen from the enactment that the word "rent" shall extend to all heriots, since they are due at uncertain intervals, which may extend over a longer time than the twenty years mentioned in the Act.

It must be remembered, that the old Statute of Limitation, 32 Hen. 8, c. 2, did not apply to actions or

prescriptions for casual rights or
not occur within the period of
might not occur more than once
tenant's life, as heriots, fealty,
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Incidents of tenure.

Besides the incidents of tenure already described, copyholds are liable to escheat for want of heirs, to forfeitures in certain cases, and to several other minor incidents which will be mentioned in this chapter.

Escheat.

If a tenant, who is beneficially entitled to a copyhold dies intestate and without heirs, the tenure will be extinguished, and the lord may claim by way of escheat (*a*). There is no escheat of a merely equitable estate, the lord's title being founded on the want of a tenant; and a mortgagee will become entitled in such a case to the equity of redemption, subject to the debts, in preference to the lord (*b*). By the Trustee Act, 1850, the Court of Chancery is empowered to make an order vesting lands in such persons as may seem proper to the Court, in case of the death of a trustee or mortgagee intestate and without heirs, so as to prevent an escheat (*c*). The lord's title to an escheat may be waived by his acceptance of any rent or service from a person in possession of the copyhold (*d*), and will be lost altogether if his claim is not made within the period fixed by the Limitation Act (*e*).

Forfeiture.

Cause of forfeiture

A copyhold may be forfeited by a wrongful act

(*a*) Co. Cop. s. 28. *Burgess* v. *Wheate*, 1 W. Bl. 167.

(*b*) *Beale* v. *Symonds*, 16 Beav. 406.

(*c*) 13 & 14, Vict. c. 60, ss. 15, 19.

(*d*) *Doe* v. *Hellier*, 3 T. R. 171. The acceptance of rent &c. must be such as will amount to a virtual admittance.

(*e*) 3 & 4 Will. 4, c. 27.

to the prejudice of the lord or by anything which amounts to a determination of the tenancy. The forfeiture may be occasioned by waste, or the creation of an unauthorised estate, or by wilful neglect or refusal to perform the customary duties and services. All cases of forfeiture are *strictissimi juris*, and the courts will take care that there is the utmost accuracy in the lord's proceedings, and will remit the penalty if any irregularity is discovered (*a*). When the law gives the lord another remedy, as where the custom imposes a fine for an offence, the forfeiture will not be allowed. And, on the same principle, Courts of Equity have frequently relieved against forfeitures, where compensation could be made to the lord, it being possible to regard the penalty as imposed merely *in terrorem* or as a security for compelling the tenant to perform his duties. Under certain circumstances the Court has given relief even in cases of voluntary waste, or refusal of services, but has sometimes put the tenant upon terms of paying the costs and repairing the damage: but the relief will be refused, if the tenant should persist in committing acts of forfeiture (*b*).

Relief in certain cases.

The proper person to take advantage of a forfeiture is the lord of the manor for the time being, however small his interest may be, and he may dispense with taking advantage of it, either expressly or by implication, as by doing any act which requires the

Who may claim.

(*a*) *Doe* v. *Hellier*, 3 T. R. 169.
(*b*) *Peachy* v. *Somerset*, 2 Eq. Ca. Abr. 222; 6 Vin. Abr. 117.

from any notion of their intending damage to the inheritance, but as it is a quitting or disclaiming their ancient right, which is thereby determined." But to occasion a forfeiture a common law interest must actually pass from the tenant; thus it will not be occasioned by a covenant to lease for more than the authorised period, or by a feoffment, which has now no tortious operation (*a*), or by a bargain and sale or lease and release, which could never pass more than the person conveying had a right to convey (*b*).

Neglect of services.

Forfeiture for neglect.

Other forfeitures may be occasioned by the tenant's refusal to pay his rent, fine, suit of court, or other services, after sufficient notice; or to be sworn on the homage after receiving a personal notice to attend, or to make proper presentments after being sworn; or if he formally disclaims his tenure (*c*). But it is no cause of forfeiture to be unprepared to pay a fine at once, the amount of which is in the lord's discretion (*d*). It has been already mentioned that in certain manors

(*a*) 8 & 9 Vict. c. 106, s. 4.

(*b*) 2 Watk. Copy. 506.

(*c*) Kitch. 124, Com. Dig. Copyh. 10, 4. Co. Cop. s. 57. "Though a fine assessed be reasonable, yet the lord ought to appoint a certain day and place where it should be paid, because it stands upon a point of forfeiture of the estate, and the copyholder is not bound to carry his fine always with him." *Willows* v. *Willows*, 13 Co. 2. And see Gilb. Ten. 205.

(*d*) 2 Watk. Copyh. 508.

the copyhold is forfeited to the lord if the person entitled to admittance (not being a minor or otherwise disabled from coming) does not come within a certain period after due proclamations have been made(*a*). The refusal of the customary services is held to be a breach of the condition on which the land was granted; "the consideration failing, the lord resumes his grant." (*b*).

Right of Estovers.

Copyholders, being bound to keep their houses and lands in a proper state of repair and cultivation, are entitled to reasonable allowances of wood for repairs, and stone, sand, &c. for purposes of husbandry, and wood or peat for fuel. These allowances are called Estovers or Botes, and the term is sometimes applied only to the allowance of wood. All these rights may be subject to customary restrictions, as that they shall only be taken after view and delivery by the lord or his bailiff, and the like. The various rights of taking wood may be classified as follows, the general term Estovers including 1. House-bote (or "the greater house-bote") being the liberty of taking timber-trees for repairing houses, or rebuilding them after accidental destruction. 2. Firebote, (or "the lesser house-bote,") being the liberty of taking the underboughs of timber-trees, tops and lops of pollards, cuttings of trees made in a reasonable manner so as not to injure the growth, deadwood, windfalls, and underwood, for

Estovers.

(*a*) *Ante*, p. 74.
(*b*) 2 Watk. Copyh. 508.

have common on his own soil, as the *prescription* would be laid in his name, and the essence of a right of common is that it should be claimed in the land of another person. But where copyholders claim a right of common outside the manor, this difficulty does not arise, and they are no longer obliged or permitted to set up a custom, but must prescribe in the name of their lord, alleging that he and they whose estate he has from time immemorial have had the privilege for themselves and their tenants at will (*a*).

By prescription.

Various kinds of common.

By the customs of various manors rights of the following kinds may be enjoyed by the copyholders upon the wastes.

1. Common of pasture appurtenant to copyhold lands for so many cattle as the lands will sustain, or for a fixed number, according to the usage. And when a number of copyholders hold an open field in undivided shares, each tenant has usually a right at certain seasons of the year to pasture his cattle over the land of all the others, which may be viewed as a reciprocal right of pasture appurtenant to each of the undivided tenements.

2. Common of estovers, or rights of taking wood from the waste for use upon the copyhold tenement, similar to the right of estovers possessed by the tenant over the wood growing on his copyhold land, which has already been described (*b*). This kind of common, as well as those which are next to be men-

(*a*) *Foiston* v. *Cracherode* 4 *Co.* 31.
(*b*) *Ante*, p. 209.

tioned, may be limited either by the requirements of the tenant or by some fixed limit of quantity, according to the usage.

3. Rights of taking underwood and such products as furze, fern, thorns, hay, rushes, &c. which very much resemble the common of estovers and are sometimes included in its definition (*a*).

4. Common of turbary, being the right to take turf or peat fit for fuel, to be used for burning in the copyholder's house (*b*). In some manors there is a customary right of taking coals for fuel, which is similar in its incidents to the common of turbary (*c*).

5. Rights of taking minerals from the waste for use upon the copyhold land, as stone, sand, clay, and ores of various kinds (*d*).

6. Common of piscary, being the right of taking fish for food from the streams and ponds belonging to the lord (*e*). And by particular custom the copyholders may have other rights similar in their nature to those which have been described.

Common appendant.

Copyholders cannot claim a right of common of pasture appendant, in the proper sense of the word, that being a right given to freehold tenants of ancient arable land by virtue of their original grants. The land need not be arable at the present time, but if it

(*a*) *Smith* v. *Brownlow* (*Earl*), 9 L.R. Eq. 241.
(*b*) *Ely* (*Dean & Ch.*) v. *Warren*, 2 Atk. 190.
(*c*) *Portland* (*Duke*) v. *Hill*, 2 L.R. Eq. 765.
(*d*) *Duberley* v. *Page*, 2 T.R. 391; *Shakespeare* v. Peppin, 6 T.R. 747.
(*e*) *Bland* v. *Lipscombe*, 4 E. & B. 713.

a special custom) although they prejudice his common and a commoner, though he have a right by custom cut fern, may not scatter the ashes which a strang has made by cutting or burning it" (a). And it is general rule that all interferences with the soil, beyon the actual taking of the produce subject to the righ common are unlawful in the absence of a spe custom or prescription.

Rights of common are in general exerciseable on by the commoner himself; but in certain cases, whe the right has been created by grant and the quanti to be taken is certain, the commoner may sever his appurtenant right and grant it to a stranger (b). Thus where a freeholder has common of pasture appurten ant for a fixed number of cattle, he may allow a stranger to use his right with the same number of cattle, because no alteration is thereby made in quantity of profit to be taken from the waste. And so when a commoner by grant has a right to take a certain quantity of wood, turf, or the like, the right may in general be severed from the tenement to which appertains. But this rule does not apply to copy- holders, their custom always being to have common on the wastes for their own use in respect of their copyhold tenements(c). A copyholder therefore is not allowed to take pasture with the cattle of other persons, even though he should at the time have none of his

(a) See the cases collected, 3 Com. Dig. 'Common' R.
(b) *Daniel* v. *Hanslip*, 2 Lev. 67. *Lathbury* v. *Arnold*, 1 Bingh. 217.
(c) *Ante*, p. 220.

own, with an exception as to cattle hired for use upon his copyhold land; and so a copyholder cannot aliene his right of estovers. turbary, or piscary to a stranger.

The commoner cannot maintain an action of trespass for damage done to the soil, but will have an action on the case against anyone who disturbs or impedes the exercise of his right. If he suffers by the way in which the owner uses the soil, he cannot by his own act remedy the injury, as by filling up pits or the like, but must bring an action (*a*). "An action will lie against the lord for a surcharge of any kind or for any unnecessary opening of the soil, whereby the commoner's cattle are injured." And an action may be brought by the commoner against any other person who surcharges the common, or who injures it, as by removing the manure lying there so as to impoverish the soil, or by digging clay and scattering it upon the waste, or by any other act to the disturbance of the right.

The commoner may distrain the cattle of a stranger doing damage, but cannot distrain when cattle are put in under a colour of right, as where the owner or another commoner puts in more than the right number of cattle (*b*).

"If the owner has prejudice in the soil where the common is, he will have remedy by action as in his other lands. If the cattle of a stranger are there he

(*a*) *Potter* v. *North*, 1 Wms. Saund. 353.
(*b*) See the cases collected, 3 Com. Dig. 'Common' H. and Cooke. *On Inclosures.*

tinguished by a conversion of pasture into an orchard and garden, a building having also been erected on part of the land. "It had land in a state in which it might have been laid down for pasture or been cultivated so as to produce plants and roots for the support of cattle; it was not, therefore, the case of a dominant tenement so changed in character as that cattle might not be fed off its produce," and a claim of common of pasture under the Prescription Act for so many cattle as the land could support was sustained (*a*). When a right of common is appurtenant to a house, as where a copyholder has by custom a right of turbary or estovers, it will be lost by a destruction of the house, provided that there is no intention to rebuild (*b*). And similar rights are lost by such alterations of the tenement as are inconsistent with the purposes for which the right of common was given (*c*).

Severance.

The right of common may also be destroyed by severance from the tenement to which it was annexed, as where the copyholder alienates the tenement, and attempts to reserve the privileges which were given for its necessary uses and profitable enjoyment. It will also come to an end of course when the produce of the waste, which was to be shared by the commoner,

(*a*) *Carr* v. *Lambert*, 1 L.R. Exch. 168.

(*b*) *Moore* v. *Rawson*, 3 B. & C. 339. *Dunstan* v. *Tresider*, 5 T.R. 2. *Stott* v. *Stott*, 10 East. 343. *Arlett* v. *Ellis*, 9 B. & C. 685.

(*c*) *Luttrel's case*, 4 Co. 86.

has been destroyed or exhausted, as where the peat in a turbary has been used up for fuel, or where particular kinds of minerals or other produce can no longer be found by the commoners. Exhaustion of profit.

The copyholder's rights of common are extinguished by an inclosure of the waste, whether such inclosure be made by agreement, encroachment, approvement by the owner of the soil, or under a local custom or Act of Parliament (*a*). Inclosure

Agreements to inclose lands without application to the Inclosure Commissioners have now become exceedingly rare, chiefly from the difficulty of obtaining the assent of every commoner.

After an inclosure by encroachment has stood for Encroachment.

(*a*) The Inclosure Acts are very numerous. Besides the general Act of 1845, 8 & 9 Vict. c. 118, under which inclosures are now effected, and about 4000 Local Acts, the following Acts require special notice, viz. 29 Geo. 2, c. 36, for making temporary inclosures to promote the growth of timber: 12 Anne c. 4, for endowing chapelries in the West Riding: the General Inclosure Act, 13 Geo. 3, c. 81, "for the better cultivation, improvement, and regulation, of common arable fields, wastes and pastures," the Common Fields Inclosure Act of 1836, 6 & 7 Will. 4, c. 115, now superseded by the Act of 1845, and the Acts amending the Act of 1845, 9 & 10 Vict. c. 70; 10 & 11 Vict. c. 111; 11 & 12 Vict. c. 99; 12 & 13 Vict. c. 83; 15 & 16 Vict. c. 79; 17 & 18 Vict. c. 97; 20 & 21 Vict. c. 31; & 22 and 23 Vict. c. 43.

The various kinds of lands subject to be inclosed under the provisions of these Acts are enumerated in the principal Act, 8 & 9 Vict. c. 118, s. 11.

For the procedure under the Act see Cooke on Inclosures, and the forms supplied by the Inclosure Commissioners, printed or described in the Appendix, post.

privilege of holding a court-leet, which so far as it is useful in the present day is held for the purpose of presenting small offences in the nature of a common nuisance, which require immediate attention and redress. It has been held therefore, that, a custom to swear the jury in one court-leet to enquire and return their presentments at the next court would be void (*a*). "A court-leet is a court of record having the same jurisdiction in particular precints, as the Sheriff's tourn and leet has in the county: it is not necessarily incident to a manor like a court-baron, but was created by grants from the Crown to certain lords of manors in order that they might administer justice to their tenants at home" (*b*). To every court-leet is annexed what is called the View of Frank-pledge, now obsolete, which refers to the ancient system by which the householders of every tything were pledges or mutual bail for the good behaviour of each other. The Court still retains the style or title of the "Court-leet and View of Frank-pledge of our Lady the Queen, held &c." All inhabitants within the district of the Court-leet are bound to attend, under penalty of some trifling fine if they have no proper excuse for being absent. If there is no particular custom to the con-

(*a*) *Davidson* v. *Moscrop*, 2 East, 56.

(*b*) *Colebrooke* v. *Elliott*, 3 Burr. 1859. Without entering on a discussion as to the origin of these courts, it may be remarked that they are in all probability older than the manorial system itself, but are treated in law as franchises granted by the Crown in each case to the lord of the manor at some time before the beginning of legal memory.

trary, it is usual for the steward to order
give notice to a number of the principal
sufficient to ensure having a jury; th
usually more than twelve and less than
twelve being the number required for
If they do not come upon the summons or
amerced by the court, and if they appear
serve they may be fined for contempt
The steward, being the judge, is not
to impanel the jury, but by custom
power of nomination (b). The chief
jury is to appoint (or in some places
the appointment) of certain officers
constable, &c.; and in some places
mayor and other officers of a borough
to present such nuisances to the
stopping up of ways, turning of water
like. But the jury has properly no
inclosures or encroachments upon the
manor, nor with making bye-laws for the
commons; where such bye-laws are found
made at courts-leet, it will be found
a court-leet and some other manorial
held together without proper distinction
pective functions (d).

(a) See Ritson. *On Courts-leet.* Scroggs. *On Co*
article "Court-leet" in 1 Ca. & Op. 234.
(b) *Rex* v. *Jolliffe*, 2 B. & C. 45.
(c) *Rex* v. *Rowland*, 3 B. & Ald. 130. *Rex* v. Dickens
Cart. 179.
(d) *Exeter* v. *Smith*, 1
Saund. 135.

confirmed or rejected by the major part of the homage at the next court (*a*). Again, it has been decided, that if thirteen copyholders be sworn on the jury in a customary court, and twelve agree to a verdict, the thirteenth dissenting, it is a good verdict without his assent. And it was held to be doubtful what would be the effect of a similiar dissent of one juror out of twelve, "for it is not a full jury" (*b*).

Customary inclosures

"The power of the lord of a manor to grant by special custom parcels of the waste, to be held by copy of court-roll is perfectly distinct from the right of approvement leaving sufficient common, which belongs to every owner of waste land (*c*). It is intended as an additional benefit to the owner of the manor and not as a restriction upon his common law right, which is superior to any such custom (*d*), Approvements are made for the owner's private benefit, and the land inclosed thereby is always of freehold tenure; while inclosures under

(*a*) *Wentworth* v. *Clay*, Ca. temp. Finch. 263.

(*b*) Calthrop. Copyh. 53. See *Thirveton* v. *Collier*, Chy. Ca. 48, and 5 Vin. Abr. 1, 2.

(*c*) 4 & 5 Vict. c. 35, s. 91. As to these customs; see *Bp. London* v. *Rowe*, 3 Keb. 124; *Hughes* v. *Games*, Ca. temp. King. 62; *Wentworth* v. *Clay*, *suprà*; *Northwick* v. *Stanway*, 3 Bos. & P. 346; *Arlett* v. *Ellis*, 7 B. & C. 346, 9 B. & C. 685; *Folkard* v. *Hemmett*, 5 T.R. 417; *Tyssen* v. *Clarke*, 3 Wils. 554; *Steele* v. *Prickett*, 2 Stark, 470; *Lake* v. *Plaxton*, 10 Exch. 196; *Boulcott* v. *Winmill*, 2 Camp. 270; *Schwinge* v. *Dowell*, 2 F. & F. 845.

(*d*) *Duberley* v. *Page*, 2 T.R. 391.

these special customs are for the benefit of a new tenant, the land being held by copy of court-roll (*a*).

The general nature of these customs will best appear from the following extract, relating to the manors of Stepney and Hackney. "The lady of the manor exhibited a bill in Chancery to establish a usage and custom within the manor, that the lords of the said manor might upon the presentment of seven of the copyholders determine what waste ground was fit to be set out and inclosed, in order to build upon the same: and such presentment being agreed unto by the major part of the homage at the next court, the same was by the custom set out, and inclosed accordingly, without any molestation or disturbance by the tenants." The presentment then sought to be established by a decree was opposed by several of the tenants, who brought actions for the disturbance of their commons of pasture, digging, and estovers, and denied the existence of the custom above described. The court decreed after an examination of the evidence, and inspection of the court-rolls from the reign of Henry 8, "that this was a reasonable usage, and fit to be established, and that the plaintiff had proceeded according to the usage in procuring the ground in dispute to be set out, presented, and allowed by the homage, and inclosed as aforesaid, and so had power to grant leases and estates thereof at her pleasure, to be inclosed and kept in severalty, &c." (*b*).

(*a*) *Arlett* v. *Ellis*, 7 B. & C. 346. 9 B. & C. 685.

(*b*) *Wentworth* v. *Clay*, Ca. temp. Finch, 263; 6 Vin. Abr. 182 &c. The custom of the manor of Hackney was again discussed

taking of gravel &c. from the waste, with a list of the documents relating to the title of the lord which did not affect the matter of the suit.

An enfranchised copyholder as such has no right to inspect the court-rolls; but if the enfranchisement has taken place under the Copyhold Acts, the owner of the enfranchised lands now has access to the court-rolls, and may have copies thereof upon payment of a reasonable sum for the same, and a scale of reasonable fees for such inspection and for taking such copies may be fixed by the Copyhold Commissioners (*a*).

The rules relating to inspection of Court-rolls apply equally to the steward's minute-books and other books and records of the manor (*b*).

Amount of fees.

The amount of the steward's fees must in each case be regulated by the custom of the manor, or in the absence of a custom by the amount of work and labour done (*c*). Thus where a person was admitted to several copyhold tenements at one time, the steward was held not to be entitled as a matter of general right to full fees on each admission separately, "and therefore in the absence of a custom to that effect he must stand upon a *quantum meruit*" (*d*). The following extracts from the case of *Traherne* v. *Gardner*, (*e*), will serve to show the principles on which the Courts

(*a*) 15 & 16 Vict. c. 51, *s.* 20.

(*b*) *Folkard* v. *Hemmett*, 2 W. Bl. 1061.

(*c*) The rules relating to the steward's fees upon enfranchisements are mentioned, in chap. XI. *post*.

(*d*) *Everest* v. *Glyn*, 6 Taunt. 425.

(*e*) 5 E. & B. 913.

have held that stewards' fees should be assessed. A tenant dying seised of four separate copyhold tenements devised them to the plaintiffs as joint-tenants, who claimed to be admitted to all the tenements, at first by a single admission and afterwards by two admissions (two of the copyholds having been originally part of one tenement held by a former tenant, and the other two having similarly been held as one tenement by another former tenant). The steward refused to accept either of these admissions, and required that there should be four separate admissions, and the payment of four separate sets of fines on each. He also claimed a fee in respect of the abolition of a surrender in the use of a will.

The plaintiffs thereupon, toavoid a forfeiture, took four separate admissions and were admitted. Four full sets of fees with four separate stamps and four sums of six shillings and eight pence, in respect of the admission being of two joint-tenants, were claimed by the steward. These fees were paid under a written protest against the right to more than two admissions, and against the compensation-fee for a surrender to the use of the will, and the fee in respect of the admission of joint-tenants.

There was no custom proved in the manor, that there should be only one admission on the claim of one person to be admitted to several separate tenements, nor any custom establishing the amount of the steward's fees upon an admission to several tenements, or his right to claim a fee in respect of the admission of a joint-tenant.

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admitted to the same. By the custom of the manor, where any person was admitted in severalty to a part of a copyhold tenement, the steward of the manor was entitled upon such admission to the same amount of fees, as if such person had been admitted to the whole of such tenement. In an action by the steward to recover sixteen fees in respect of the admission to the purchased allotment, it was held that it must be considered to have been allotted in respect of a portion of each of the sixteen former tenements, and that therefore the steward was entitled to recover sixteen fees (*a*).

(*a*) *Evans* v. *Upsher*, 16 M. & W. 675. The Inclosure Commissioners can now amend awards under Local Acts, which are defective in distinguishing the several lands in respect of which an allotment is made. 8 & 9 Vict. c. 118, s. 152,

CHAPTER X.

EVIDENCE.

that copyholders may show by evidence of user (if uncontradicted by evidence of the custom having been the other way) that they are entitled to the minerals or timber on their copyholds. "Usage, though it be not ancient, which is admissible and unopposed by other evidence, is usually conclusive" (*a*). A copyhold tenement described as "meadow" on the court-roll may by usage be shown to include no more than the "first crop" (*b*), and so with similar instances.

Boundaries may be proved by evidence of reputation (*c*) where the question relates to matters of general or public interest. The declarations of deceased persons, who were conversant with the locality, are admissible if made *ante litem motam* (*d*). Thus the evidence of deceased persons has been admitted to prove the boundaries of a manor (*e*), and in an action concerning wreck, an ancient document purporting to be the answers of deceased tenants to commissioners appointed by a former lord was allowed as evidence of the boundary of the manor, but not of the private right to the franchise (*f*). A verdict in a former suit concerning boundaries is admitted as being

(*a*) *Rex.* v. *Hoyte*, 6 T.R. 430. As to the effect of usage in showing the respective rights of a lord and commoners upon a waste, see *Bateson* v. *Green*, 5 T.R. 416, and *Salisbury (Marquis)* v. *Gladstone*, 9 H.L.C. 692.

(*b*) *Stammers* v. *Dixon*, 7 East. 200.

(*c*) On the whole subject of evidence in cases of boundary, see Hunt. *On Boundaries.* c. 14. Taylor, Evid. 554 *et seq.*

(*d*) *Reg.* v. *Bedfordshire Inhts.* 4 E. & B. 535.

(*e*) *Doe* v. *Sleeman*, 9 Q.B. 298.

(*f*) *Talbot* v. *Lewis*, 1 C. M. & R. 495.

equivalent to evidence of reputation (*a*). On the same principle ancient records, terriers, surveys, conveyances, &c. have been admitted as evidence of reputation or as equivalent thereto. But they must come from a proper custody, and be shown to have been made under the proper authority (*b*). Manorial surveys must be signed by the tenants, and presentments made by a jury of survey must be properly signed. Such presentments are not admissible if made *post litem motam*. Thus, in a case relating to the title of the soil of a sheep-walk, a presentment on the court-rolls was rejected, wherein the jurors recited that they were sworn to view the land in question, and stated upon oath that it was part of a certain waste and not part of the freehold tenement, and it was held that it could not be admitted as a proper presentment, because the homage had no power to decide the question of private right, nor as an award for want of mutual submission, nor as evidence of reputation, because it was made after the commencement of the dispute (*c*). Presentments in a court-roll are not evidence that the lord has acted as the owner of lands in dispute (*d*), nor are presentments of fines, amercements, or the like, evidence

Surveys, presentments, and maps.

(*a*) *Brisco* v. *Lomax*, 8 A. & E. 210.
(*b*) *Evans* v. *Taylor*, 7 A. & E. 617. As to admitting surveys when Beaufort v. Smith, 4 Exch. 450. the commission has been lost, see *Rowe* v. *Brenton*, 8 B. & C. 747. And as to the Parliamentary surveys taken during the Commonwealth, see *Roe* v. *Ireland*, 11 East. 280. and *ante* p. 268.
(*c*) *Richards* v. *Bassett*, 10 B. & C. 657.
(*d*) *Irwin* v. *Simpson*, 7 Bro. P.C. 317.

Entails.

custom (*a*). We have seen that a grant to a man and the heirs of his body may according to the custom of the particular manor give either an estate-tail or a fee-simple conditional. "It is no evidence of a custom to make a grant in tail, that land has been used to be granted to a man and the heirs of his body, unless there has always been a remainder after such estate, or the issue have avoided the alienation of his ancestor &c" (*b*), or unless there has been some other dealing with the estate, which is inconsistent with the nature of a conditional fee. On the other hand, the custom of entailing may be disproved by instances of dealing with the land in a way which is only appropriate to an estate in fee-simple conditional, as where the tenant has aliened in fee after the birth of issue, without any disentailing assurance, and the issue has failed to recover.

Before the Act for the abolition of Fines and Recoveries it was held, that a single instance of barring an entail by a surrender was sufficient evidence of a custom to bar either by surrender or by the method of a customary recovery; but if there were many instances of barring by recovery, it would be evidence that a surrender was not the proper method of barring entails in the manor (*c*).

Copyhold assurances.

Disentailing assurances of copyholds under the Act must be enrolled on the court-rolls within six months

(*a*) *Ante*, p. 48.
(*b*) Co. Litt. 60 *b*.
(*c*) *Roe* v. *Jefferey*, 2 M. & S. 92.

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have not usually been en
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(*a*) *Honeywood* v. *Fos*
Dowl. P.C. 693.
(*b*) Dart. V. & P. 287.
(*c*) *Breeze* v. *Hawker*, 1
(*d*) *Doe* v. *Hall*, 16 Ea
844.
(*e*) *Appleton* v. *Braybro*
(*f*) *Doe* v. *Mee*, *supra*.
(*g*) 33 & 34 vict. c. 97,
affecting copyholds will be
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will at once become part of the manor, dis-
f the customary tenure, and subject of course
mbrances and limitations affecting the resi-
e manor (*a*). Thus it was held, that a copy-
endered to the use of the lord and his heirs
ure to the benefit of a mortgagee under a
nortgage of the manor, and that the equity
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ttlement of the estate as comprised in the
(*b*)

be remembered that the copyhold
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fee: but that if such an interest has been
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nterest by the owner of a limited estate will
he power of reviving the copyhold during
nuance of such limited estate (*c*).
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Paul v. *Dudley*, 15 Ves. 167.
v. *Potts*, Doug. 710.
e, p. 55.

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Ecclesiastical estates.

The Copyhold Acts do not apply to manors belonging to an ecclesiastical corporation or to the Ecclesiastical Commissioners, where the tenant has not a right or renewal (*a*). In other cases, enfranchisements in these manors may be effected under these Acts, or under the Ecclesiastical Estates Act, 1851 (*b*). In cases of compulsory enfranchisement, the Ecclesiastical Commissioners have the same right to notice, with power of dissenting, as the person next in remainder in an ordinary enfranchisement by a limited owner (*c*).

The Act of 1851 gives power to such corporations, with the approval of the Church Estates Commissioners, who shall pay due regard to the just and reasonable claims of tenants holding lands at the date of the Act, to sell or exchange their reversionary interest in any hereditaments held under a lease or copyhold grant, and to enfranchise copyholds, or to purchase the interests of lessees and copyholders with the consent of the sub-lessees having covenants of renewal (*d*).

(*a*) Act of 1858, s. 4. This does not extend to Christ Church, Oxford.

(*b*) 14 & 15 Vict. c. 104, continued by later Acts. See 24 & 25 Vict. c. 131, and 33 & 34 Vict. c. 103. The Act does not apply to Christ Church, Oxford, or to any college or hospital, or to the incumbent of a benefice, s. 11. Provision is made for ascertaining whether the tenant has a right of renewal by 17 & 18 Vict. c. 116, s. 5.

For enfranchisements of copyholds in manors belonging to the Universities of Oxford, Cambridge, and Durham, the colleges therein, and the colleges of Eton and Winchester, see 21 & 22 Vict. c. 44; and 23 & 24 Vict. c. 59.

(*c*) Act of 1858, s. 19.

(*d*) 14 & 15 Vict. c. 104, ss. 1 to 4. For the form of convey-

Crown manors.

The Copyhold Act, 1858, provides in certain cases for enfranchisements in manors belonging to the Crown or the Duchy of Lancaster (*a*).

In case of difference as to the amount to be paid for enfranchisement in such manors, the matter may be referred to the decision of a land-surveyor to be appointed by the Copyhold Commissioners (*b*). Any manor vested in the Crown in remainder or reversion expectant on an estate of inheritance, or lands held of it, may be dealt with under the Copyhold Acts, with the consent in writing of the Commissioners of Woods and Forests, or any one of them (*c*). If the last-named Commissioners concur in the deed, a memorial

ance and application of monies, see ss. 5, 6, 7. Power is given to trustees to raise the money for such enfranchisements, by 17 & 18 Vict. c. 116, s. 3. If the *cestuis-que-trust* are under disability, or refuse assent, the trustees may raise money for enfranchisement out of the funds in a settlement, or by sale of other lands subject to the same trusts as the lands to be enfranchised, with the sanction of the Court of Chancery to be obtained on petition. If the trustees have no power of sale they can sell to the corporation with the sanction of the Court. 23 & 24 Vict. c. 124, ss. 29, 36, 37, 38; and 33 & 34 Vict. c. 103. Dan. Ch. Pr. 1932, 1933.

(*a*) In Crown manors enfranchisements are usually made by the Commissioners of Woods and Forests under their Act, 10 Geo. 4 c. 50, ss. 34, 69. Enfranchisements are made by the Chancellor and Council of the Duchy of Lancaster under 19 Geo. 3, c. 45, and 27 Geo. 3, c. 34. Provision is made for the enfranchisement of copyholds parcel of the Duchy of Cornwall by 7 & 8 Vict. c. 65; and 7 & 8 Vict. c. 105 provides for the confirmation and enfranchisement of conventionary tenements in the "assessionable manors" of the Duchy.

(*b*) Act of 1858, s. 41.

(*c*) s. 42.

being paid (without the necessity of any fresh order) to the person entitled to such consideration or compensation, or to such rent-charge if it had not been redeemed. Where the person so entitled is under disability, or shall be beyond the seas, the guardian &c. or attorney of such person will be substituted for him, or in default thereof, or in case the person interested be unknown or not ascertained, the Commissioners will appoint a fit substitute (*a*).

Upon any vacancy in the office of any such trustee appointed by the Commissioners, another fit person is to be appointed by them in like manner (*b*).

When any consideration money shall not exceed £20 for the redemption or sale of all the redeemable rent-charges in the manor, the Commissioners may direct the same to be paid to the persons for the time being entitled to the rent-charge, or in cases of disability to their guardians, husbands, committees, or trustees (*c*). And a similiar provision is made for the case where the money to be paid for all the enfranchisements in the manor shall not amount to £20 (*d*).

Payment to wrong persons.

If any principal money shall be paid for enfranchisement to a lord not entitled thereto, the land charged with the payment is to remain charged in favour of the person rightfully entitled, but with such remedies against the person wrongfully receiving the same

(*a*) Act of 1841, s. 11.
(*b*) Act of 1852, s. 39.
(*c*) Act of 1852, s. 40.
(*d*) Act of 1841, s. 75.

money as purchasers are entitled to by t
law or equity (a). And it is further prov
Act of 1852, that in case any such money
to a lord with a bad or defective title
owner or his representatives may recov
money had and received to the use o
tenant or person claiming to be tenant
by an adverse claimant, after payme
the enfranchisement of the land, he
to claim repayment as against the lan
of money so paid shall be a charge o
interest at £4 *per cent* (b).

The receipt of any person to who
pursuant to the Act is to be a sui
and will relieve the person making th
seeing to its application (c).

In the case of a corporation or other
held upon a charitable trust within th
the "Charitable Trust Act, 1853," (d)
Trust Amendment Act, 1855," not auth
an enfranchisement rent-charge, except
hold Acts, the money to be paid for redem
of the rent-charge, or as compensation f
franchisement, may be paid to the Official T

(a) s. 76.
(b) s. 47.
(c) Act of 1841, s. 78.
(d) The Charitable Trusts Acts are 16 & 17 Vict. c. 137; Vict. c. 124; 23 & 24 Vict. c. 136; 25 & 26 Vict. c. 112; Vict. c. 110.

of gavelkind in Kent (*a*). To prevent the necessity of inquiring into the lord's title, it is enacted that all lands enfranchised under the Act of 1841 shall remain under the same title as that under which they were held at the time of enfranchisement, and shall not be subject to any estates, incumbrances, &c., affecting the manor of which they were held (*b*). All mortgages affecting the land shall become mortgages of the freehold, if the consideration for enfranchisement shall have been paid off, or if it is not so paid off, shall become mortgages of the equity of redemption, subject to the charge of the consideration and interest (*c*).

Existing uses.

Where the enfranchised land was immediately before the enfranchisement subject to any subsisting lease at will or for any greater interest, the freehold into which the estate is converted shall be the immediate reversion with the rents and services annexed, and the covenants and agreements of both parties, shall run with the land, and the rights of distress, entry, or action, shall not be prejudiced or affected (*d*). Commonable rights, to which the tenant is entitled in respect of his lands, are not lost or affected by enfranchisement, whether voluntary or compulsory (*e*).

Reservation of minerals.

On any commutation or enfranchisement under the Act of 1841, *c.* 80. For similar provisions as to commuted lands, see the Act of 1843, *c.* 10. Act of 1852, *c.* 45.

(*a*) Act of 1852, s. 34.
(*b*) Act of 1841, s. 64.
(*c*) Act of 1841, s. 81.
(*d*) Act of 1852, s. 44.
(*e*) Act of 1841, s. 81.

Act of 1841, the tenants may
of way, entry, and other ease
win and carry away mineral
their lands. In the case of a
of such easements, and the c
be stated in the agreement;
ment with a reservation of
are to be reserved and grant
chisement (*a*).

Notwithstanding any suc
the owner of lands enfran
voluntary or compulsory
remove the soil, so far as
venient for making roads o
or obtaining water on su
shall not prejudice the lord'
by him on a compulsory en
of the Copyhold Act, 1852

After any voluntary or c
under the Acts, all person
the land are to have access
rolls of the manor, and to
thereof on payment of a rea
of fees may be prepared by t
shall think it necessary or
the lands in a manor are
person having custody of t

(*a*) Act of 1841, s. 84.
(*b*) Act of 1858, s. 14.
(*c*) Act of 1852, s. 20.

When the notice of the appointment of valuer has been received, the party on whom it has been served must, within 28 days, appoint his valuer, and should send notice of such appointment both to the opposite party and to the Commissioners.

In any case where after notice to the lord or tenant (as the case may be) so to do, either party shall neglect or refuse for 28 days formally to appoint his valuer, and give due notice of the appointment to the other party, the power of appointment is lost to the party so failing, and the Commissioners, on being requested to do so, will appoint a valuer.

Valuers to appoint an umpire

"6. The valuers within 14 days after their appointment, and before they proceed, must appoint an umpire, to whom any points in dispute between them shall be referred, and forward a copy of such appointment to the Commissioners. If they fail to appoint, the choice after an interval of 14 days devolves upon the Commissioners. The valuers should, if they cannot agree upon an umpire, inform the Commissioners of the fact.

Valuers and umpire to make declaration.

7. "Before any valuer or umpire shall enter upon his valuation, he must, in the presence of a Justice of the Peace, make and subscribe the following declaration:—

"I do declare that I will faithfully to the best of my ability, value, hear, and determine the matters referred to me under the Copyhold Acts.

Made and subscribed in the presence of this day of 187 ."

"8. Each party should furnish h
information necessary to enable hi
value of the lord's rights, but should
glect or refuse to do so, the valuers
such information as they can otherwis
person so failing or refusing must a
quences.

"9. The valuers should then enter
tion (*a*), and should they agree upon
to be paid for the enfranchisement, m
—*a form* of which may be had on
Commissioners. Such award must be
Commissioners, and the particulars
writing be delivered to the lord or t
to the tenant, or his solicitor, withi
the appointment of the valuers. Sh
however, be unable to agree upon the
be awarded, they must, before the exp
days, refer the matter to the umpire
will then be to make the award, and fu
of the same as above-mentioned, withi
the matter being referred to him.

"10. To every award must be ann

(*a*) The valuers are to take into account "th
provement, customs of the manor, fines, heriots
chief-rents, escheats, forfeitures, and other inc
and customary tenure, and all circumstances aff
be enfranchised, and all advantages to be derive
chisement," and to make due allowance for
1852. s. 16. Any existing obstacles to impr
taken into account. *Arden* v. *Wilson*, 7 L.R.

enfranchisement. In the cited Report will
instances of the enfranchisement of heriots
in amount for sums varying from £2. to £47.
to the circumstances.
e are cases of copyholds paying small fines
which the incidents have little or no value,
therefore the sum paid on enfranchisement
ly the consideration for the mere charge of
Two years' purchase has been usually given
uthern Counties."
Copyholds of inheritance with the
certain are frequently enfranchised at one
ne. Copyholds of inheritance with the
from three to five years' annual
being made for land-tax in
l value (*a*). Eight years'
to the same Report, in the case of
te, with fine arbitrary on the death
e death or alienation of the tenant.
as arbitrary on the admission
n the roll paying no subsequent fine
three and a half years' value was taken,
ears' value, when the fine was arbitrary,
on the admission of an heir or any person
copyholder. In the case of copyholds for
a right of renewal, enfranchisements are
de on something like the following terms:
held for a single life, about three years'

ount varies according to the age of the tenant, from
or under to seventy years or upwards. See the table
Commissioners, which is printed in the Appendix.

value: for three lives, about six year
lives about the same: for six lives
the terms varying according to the
and varying as the lives are in posse
the other circumstances being tak
The Report above-mentioned and the
the Commissioners will supply inst
chisements of copyholds for lives
renewal: for a copyhold of this kind,
seventeen years' value was taken; fo
years' value; and in another case ab
a half years' value; for three lives, t
&c., according to the circumstances o
estimating the value of the lord's rig
the Act of 1852, s. 16, the advant
chisement and previously existing
dealing with the property are to be tak
the amount awarded being in genera
of the actual value. But the amount wi
to the respective rights of the lord a
particular manor. The lord's rights
excepted from the compulsory provisio
and so with such manorial rights as
free-warren, &c., which are mention
the Act of 1852. Instances of enf
such reserved rights, made by consent
will be found in the Commissioners' Re
sum may be awarded in respect to th
escheat and other manorial rights no
larly mentioned.

How consideration consisting of periodical payments to be charged.

"72. (*a*) Where the consideration, or any part of the consideration, for a conveyance on sale consists of money payable periodically for a definite period, so that the total amount to be paid can be previously ascertained, such conveyance is to be charged in respect of such consideration with *ad valorem* duty on such total amount."

"(*b*) Where the consideration, or any part of the consideration, for a conveyance on sale consists of money payable periodically in perpetuity, or for any indefinite period not terminable with life, such conveyance is to be charged in respect of such consideration with *ad valorem* duty on the total amount which will or may, according to the terms of sale, be payable during the period of twenty years next after the day of the date of such instrument."

"(*c*) Where the consideration, or any part of the consideration, for a conveyance on sale consists of money payable periodically during any life or lives, such conveyance is to be charged in respect of such consideration with *ad valorem* duty on the amount which will or may, according to the terms of sale, be payable during the period of twelve years next after the day of the date of such instrument."

"(*d*) Provided that no conveyance on sale chargeable with *ad valorem* duty in respect of any periodical payments, and containing also provision for securing such periodical payments, is to be charged with any duty whatsoever in respect of such provision, and no separate instrument made in any such case for securing such periodical payments is to be charged with any higher duty than ten shillings."

How conveyance in consideration of a debt, or subject to future payment, &c., to be charged.

"73. Where any property is conveyed to any person in consideration, wholly or in part, of any debt due to him, or subject either certainly or contingently to the payment or transfer of any money or stock, whether being or constituting a charge or incumbrance upon the property or not, such debt, money, or stock is to be deemed the whole or part, as the case may be, of the consideration in respect whereof the conveyance is chargeable with *ad valorem* duty."

Direction as to duty in certain cases.

"74. (*a*) Where any property has been contracted to be sold for one consideration for the whole, and is conveyed to the pur-

chaser in separate parts or parcels consideration is to be apportioned in think fit, so that a distinct considera parcel is set forth in the conveyan conveyance is to be charged with *a* such distinct consideration."

"(*b.*) Where property contracted f sideration for the whole by two or m person for himself and others, or wh parts or parcels by separate instrume whom the same was purchased for dis tion, the conveyance of each separ *charged* with *ad valorem* duty in resp *consideration* therein specified.

"(*c*). Where a person, having contra property but not having obtained a c to sell the same to any other person, a sequence conveyed immediately to the ance is to be charged with *ad valorem* d sideration for the sale by the origin purchaser.

"(*d.*) Where a person, having contract property but not having obtained a con the whole, or any part or parts thereo persons, and the property is in conse original seller to different persons in part ance of each part or parcel is to be charg in respect only of the consideration movi thereof, without regard to the amount consideration."

"(*e.*) When a sub-purchaser takes an a interest of the person immediately selling able with *ad volorem* duty in respect of t from him, and is duly stamped accordingly afterwards made to him of the same seller shall be exempt from the said *ad valo* only with the duty to which it may be l

upon a mortgage, but such last-mentioned duty shall not exceed the said *ad valorem* duty."

As to mortgage with conveyance of equity of redemption.

"111. An instrument chargeable with *ad valorem* duty as a mortgage is not to be charged with any other duty by reason of the equity of redemption in the mortgaged property being thereby conveyed or limited in any other manner than to, or in trust for, or according to the direction of, a purchaser."

The following duties are charged by the schedule to the Act, viz.:

	£	s.	d.
APPOINTMENT of new trustee, and appointment in execution of a power of any property, or of any use, share, or interest in any property, by any instrument not being a will	0	10	0
And *see* s. 78.			
CONVEYANCE or transfer on sale (*a*), where the amount or value of the consideration for the sale does not exceed 5*l*.	0	0	6

(*a*) The old scale was fixed by 13 & 14 Vic. c. 97 as follows. Where the purchase-money did not exceed £25, a duty of 2*s*. 6*d*. Up to £300 a sum of 2*s*. 6*d*. for every £25 or part thereof. Over £300 and under £600 a sum of 5*s*. for every £50 or part thereof. Over £600 a sum of 10*s*. for every £100 or part thereof. Progressive duty was payable for every 1080 words after the first 1080, to the amount of 10*s*., or of the *ad valorem* duty, if it did not amount to 10*s*.

The Act contained the following exemptions, viz.:

1. All surrenders and other instruments relating only to copyholds or customary estates, whose clear annual value did not exceed 20*s*. over which were otherwise charged as hereinafter mentioned.

2. All voluntary grants made by the lord of the manor of any copyhold or customary lands or hereditaments to the lady for a life or lives for a pecuniary consideration, and the copies of court-roll of such voluntary grants.

All which instruments were charged with the ordinary duty as hereafter mentioned.

3. Conveyance of any estate or property, in trust for sale, which was intended only as a security for money or stock.

For every 5*l.* or fraction of 5*l.* between 5
For every 25*l.* or fraction of 25*l.* betwee
300*l.* ... ...
Above 300*l.* for every 50*l.* and fraction of
And *see* ss. 70 to 77, inclusive.
CONVEYANCE or transfer of any kind n
described ... ...

COPY or EXTRACT (*attested or in any ma*
thenticated) of or from—
The books, rolls, or records of any cou
In the case of an instrument charge
any duty not amounting to one sh
In any other case ... .

COPYHOLD and CUSTOMARY ESTATES—Inst
relating thereto.
Upon a sale thereof. *See* CONVEYANCE o
Upon a mortgage thereof. *See* MORTGAG
Upon a demise thereof. *See* LEASE.
Upon any other occasion,
Surrender or grant made out of c
the memorandum thereof,
and copy of court-roll of any surre
grant made in court ... ...
And *see* sections 81, 82, 83, 84, 85, and 86 (

(*a*) The following duties were payable for instrum
date of the late Act:
"Copyhold estates, and customary estates, passi
admittance, or by admittance only, and not by deed
ting thereto, upon the sale or mortgage of such estat
Any admittance out of court, or the memorandum
of court-roll of any admittance in court, ...
And where the same contained 2160 words or upw
entire quantity of 1080 words contained therein over
1080 words, a further progressive duty of .. ..
—(13 & 14 Vict. c. 97.)
Copyhold estates, and customary estates, passi
admittance, or by admittance only, and not by deed

9. G. Declaration of valuer.

10. H. Award of valuer.

11. I. Award of valuers.

12. K. Award of umpire.

13. M. Appointment of umpire.

14. N. Appointment by lord and tenant of one and the same person as valuer.

15. O. Form of receipt.

16. Table for the enfranchisement of copyholds of inheritance subject to arbitrary fines.

Form No. 1.

COPYHOLD COMMISSION.

FORM indicating the particulars of the information to be furnished to the Copyhold Commissioners by the steward of the manor in every case of enfranchisement under the Copyhold Acts.

As to compulsory cases.—Full information is given in the minute of the Copyhold Commissioners. (*Ante*, p. 315.)

In voluntary cases.—Upon this form being forwarded to the Commissioners, signed by the steward, and with the several questions fully answered, instructions will be given as to further proceedings.

*** *If these questions are not fully answered, and unless these*

answers give all the details of the ca
the amount of enfranchisement money
will necessarily occur, and further co
points must arise.

The land to which the under-menti
refer is situated in the manor of
in the parish of
of and is described
hereto.

1.—Name and address of the lord.

2.—State whether the lord is seised in fee simp
or how otherwise; and if not seised in fee, s
to the first vested estate of inheritance in th

3.—How is the consideration money proposed to

To the lord?

To trustees acting under the will or
which the lord holds? If so, give name
descriptions.

To trustees to be nominated by the Commi
be no trustees acting under the will or so

Into the Bank of England *ex parte* the
missioners?

To the Church Estates Commissioners?

To the Governors of Queen Anne's Bounty

To the Official Trustees of Charitable Funds

4.—If incumbered, state nature of incumbrance,
and addresses of the persons entitled thereto.
proportion the aggregate amount of the inc

B.

Form of Notice from Lord to Tenant of his desire to Enfranchise under "The Copyhold Acts."

Manor of
in the County of

I,
of
in the parish of in the county
of lord of the above manor, do hereby, pursuant to the provisions of "The Copyhold Acts," give you notice of my desire that the lands copyhold of the said manor, to which you were admitted, on or about the
day of 18 shall be enfranchised under the said Acts.

Dated this day of 187

To

A tenant of the said manor of

Note.—A copy of this notice should be sent to the Copyhold Commissioners, with an endorsement stating when and how served.

C.

FORM of Appointment of Valuer by Lord under "The Copyhold Acts."

Manor of
in the County of

I,
of
in the county of lord of the above manor, do in pursuance of the provisions of "The Copyhold Acts," hereby appoint of my valuer for the purpose of ascertaining and determining, under the provisions of the said Acts, the consideration to be paid for the enfranchisement of the lands copyhold of the said manor, to which of was admitted tenant on or about the day of 18

Dated this day of 187

NOTE—A copy of this appointment should be forwarded to the Copyhold Commissioners.

I.

AWARD OF VALUERS.

County of

Manor of

Enfranchisement.

AWARD OF

and

as Valuers in the matter of this Enfranchisement.

☞1. *The declaration of the valuers must be annexed.—See minute of instruction issued by the Commissioners.*

2. *When the lord compels the enfranchisement and the consents to pay a gross sum, the tenant's consent must be annexed.*

3. *When the rights reserved by the Act of* 1852, *Section* 48, *are included, the consent of the Lord must be annexed.*

4. *The award should be forwarded to the Commissioners, and the particulars of the same in writing be delivered to the Steward, and to the Tenant or his Solicitor, and the Commissioners should be informed that this has been done when the Award is sent in. These particulars are usually furnished by sending to each party a copy of the Award.*

AWARD OF VALUERS.

Manor of

In the County of

Enfranchisement.

IN the matter of the above enfranchisement under "The Copyhold Acts," We of . in the county of the valuer appointed by and on behalf of . of the lord of the said manor, and of . in the county of the valuer duly appointed by and on behalf of the said . of a tenant of the manor, to determine the consideration to be paid for the enfranchisement of the lands in the schedule hereunder written, to which the said was admitted tenant on or about the day of 187 , having in all respects complied with the provisions of the said Acts, do hereby determine and award as follows: that is to say—

We determine and award that the compensation to be paid by the said

O.

RECEIPT FOR CONSIDERATION.

Manor of

in the County of

Enfranchisement.

RECEIVED on the day of
18 of and from

the sum of £

being the consideration money for the enfranchisement under "The Copyhold Acts" of the lands held of the above manor, to which the said

was admitted tenant on or about the day of

187

WITNESS,

TABLE

For the Enfranchisement of Ordinary Copyholds of Inheritance subject to Arbitrary Fines.

TABLE showing the Number of Years' purchase on the (*a*) Net Annual Value of Property proposed to be Enfranchised in respect of Fines (*b*).

Age of Copyhold Tenant	Number of Years' purchase	Nearest value in sterling money £ s. d.	Age of Copyhold Tenant	Number of Years' purchase	Nearest value in sterling money. £ s. d.
20 or under 20	3.000.000	3 0 0	46	3.700.382	3 14 0
			47	3.751.010	3 15 0¼
			48	3.802.532	3 16 0½
21	3.011.988	3 0 2¾	49	3.858.841	3 17 0¾
22	3.022.666	3 0 5½	50	3.905.266	3 18 1¼
23	3.033.185	3 0 7¾	51	3.956.733	3 19 1½
24	3.044.470	3 0 10¼	52	4.008.130	4 0 1¾
25	3.056.761	3 1 1½	53	4.059.671	4 1 2¼
26	3.071.101	3 1 5	54	4.111.253	4 2 2½
27	3.087.629	3 1 9	55	4.162.803	4 3 3
28	3.105.529	3 2 1¼	56	4.213.388	4 4 3
29	3.125.330	3 2 6	57	4.264.790	4 5 3¼
30	3.146.782	3 2 11	58	4.317.596	4 6 4
31	3.169.810	3 3 4¾	59	4.371.464	4 7 5
32	3.194.521	3 3 10½	60	4.426.120	4 8 6¼
33	3.221.105	3 4 5	61	4.481.597	4 9 7½
34	3.249.669	3 4 11¾	62	4.537.232	4 10 8¾
35	3.281.621	3 5 7½	63	4.593.613	4 11 10¼
36	3.314.487	3 6 3¼	64	4.651.009	4 13 0
37	3.347.914	3 6 11¼	65	4.709.629	4 14 2¼
38	3.380.887	3 7 7½	66	4.768.830	4 15 4¼
39	3.415.715	3 8 3¾	67	4.828.345	4 16 6¾
40	3.449.796	3 8 11¾	68	4.887.679	4 17 9
41	3.485.078	3 9 8¼	69	4.945.469	4 18 10¾
42	3.522.686	3 10 5¼	70		
43	3.562.511	3 11 3	or	5.000.000	5 0 0
44	3.605.401	3 12 1¼	upwards		
45	3.651.564	3 13 0¼			

(*a*) In estimating the net annual value no deduction should be made for land tax.

(*b*) See Rouse's Enfranchisement Manual, p. 116 and note.

WE, the undersigned, being persons representing at least one-third in value of all the interests in the land above-mentioned, situate in the*

of

in the County† of

proposing, on behalf of ourselves and of the other persons interested, to inclose such land, under "The Acts for the Inclosure, Exchange, and Improvement of Land," submit to the Inclosure Commissioners for England and Wales, the information in respect to such land and to the proposed inclosure, written as Answers to the foregoing Questions, and we believe such information to be correct: And we hereby request the said Commissioners to certify in their Annual General Report the expediency of such Inclosure.

(Signed)

To the Inclosure Commissioners for England and Wales.

* Parish or township, or place; or several townships, parishes, or places, as the case may be.

†Or counties.

N.B. All signatures under a power of attorney to any document, must be in the name of the principal, and the power of attorney appended thereto. If otherwise signed, it must be returned.

2.

INSTRUCTIONS for effecting Exchanges under the provisions of "The Acts for the Inclosure, Exchange, and Improvement of Land."

These Instructions, modified accordingly to circumstances, will also be generally applicable to Partitions, and to divisions of intermixed Lands: and also to Exchanges of Glebe under the Tithe Acts.

EVERY Application for an Exchange must be accompanied by a Map or Plan and a Valuation of the lands proposed to be dealt with; and in some cases a Re-apportionment of the Tithe Rent-Charge affecting such lands will also be necessary.

The Application.

Printed forms of Application may be obtained from the Office of the Inclosure Commissioners, No. 3, St. James's Square, London, and *in all cases the Application should be submitted in draft* to the Commissioners, prior to its execution by the persons interested.

When the lands to be exchanged form part of an estate, it is desirable, for the sake of identity, that the name of the estate should be given;—for the same reason, in the exchange of cottages, gardens, or pieces of land not known by particular names, the occupiers' names should be stated.

When lands are in more than one parish, the lands of each parish must be kept distinct.

Every parcel held under a different title, or for a different estate, as well as the land for which such

WITNESS our hands to the foregoing application this day of in the year of our Lord one thousand eight hundred and

The consent of the Bishop of the Diocese, and Patron of the Benefice, being necessary where lands are held in right of any Church, Chapel, or other Ecclesiastical Benefice, should be given as follows :—

We, the undersigned Lord Bishop of the Diocese of and of in the county of Patron of the Benefice hereinbefore mentioned, do hereby consent to the foregoing application.

(Signed)

The consent of the lord of the manor, being necessary to the exchange of copyhold or customary land, should be given as follows :—

I, the undersigned of in the county of lord of the manor of aforesaid, do hereby consent to the foreging application.

(Signed)

4.

Form of Application for a Partition.

I, the undersigned, of in the county of being the person interested under the provisions of "The Acts for the Inclosure, Exchange and Improvement of Land," in undivided parts or shares in the lands and hereditaments hereinafter mentioned, and I the undersigned of being the person interested under the provisions of the said Acts in the remaining undivided part or share in the same lands and hereditaments, and being desirous of effecting a partition, as hereinafter mentioned, hereby apply to you to direct inquiries whether such proposed partition would be beneficial to the respective owners of such undivided parts; and, in case you should be of opinion that such partition would be beneficial, and the terms thereof just and reasonable, to proceed with the same under the provisions of the said Acts.

k. Form of application to exchange cattle-gates, &c.

l. Form of Order of Exchange.

m. Form of application to amend and award under a Local Act (8 & 9 Vict. c. 118, s. 152, and 10 & 11 Vict. c. 111, s. 5).

n. Notice of meeting to dispose of Railway compensation money, under 17 & 18 Vict. c. 97, s. 15.

IV.

THE COPYHOLD ACT, 1852.

15 & 16 Vic. c. 51.

An Act to extend the provisions of the Acts for the commutation of manorial rights, and for the gradual enfranchisement of lands of copyhold and customary tenure. [30th *June* 1852.]

WHEREAS an Act was passed in the session of Parliament holden in the fourth and fifth years of the reign of Her present Majesty Queen Victoria, intituled an Act for the commutation of certain manorial rights in respect of lands of copyhold and customary tenure, and in respect of other lands subject to such rights, and for facilitating the enfranchisement of such lands, and for the improvement of such tenure: And whereas the said Act was amended and explained by an Act passed in the session of Parliament holden in the sixth and seventh years of the reign of Her present Majesty (*a*), and by an Act passed in the session of Parliamemt holden in the seventh and eighth years of the reign of Her present Majesty: And whereas it is expedient to extend the provisions of the said Acts in manner herein-after provided: May it therefore please your Majesty that it may be enacted; and be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

4 & 5 Vict. c. 35.

6 & 7 Vict. c. 23.

7 & 8 Vict. c. 55.

(*a*) See s. 54 of this Act.

chised under the powers of this Act, subject to which the land is enfranchised, and may specify any place, to be agreed upon between the parties, as the place of payment of the principal money and interest charged by the certificate; and, if the parties so agree, or the said Commissioners shall so direct as aforesaid, such certificate may provide that such principal money, or any part or parts thereof, shall continue upon the security of such certificate for any term or terms of years, period or periods, in such certificate mentioned, not exceeding ten years, and the lands charged thereby may be described by reference to the enfranchisement thereof under the said Acts, or otherwise, as the Commissioners may think fit; and such certificate may be in the form set forth in the schedule to this Act, or in such other form as the parties, with the consent of the Commissioners, may think proper, and shall be entered on the court rolls of the manor (*a*).

Certificates to be transferable by endorsement.

XIII. Such certificate, and the charge thereby made, shall be transferable by endorsement of such certificate, and such endorsement may be in the form set forth in the schedule to this Act, or to the like effect (*b*).

Stamp on certificates.

XIV. Every certificate of charge and transfer thereof issued or made under this Act shall be chargeable with the like stamp duties as are chargeable in respect of other mortgages and transfers thereof (*c*).

Commissioners may correct any error in award, &c. after notice to parties interested.

XV. It shall be lawful for the said Commissioners to correct and supply any manifest error or omission in any award, or in any deed of enfranchisement or charge under this Act, or any other instrument authorised by this Act to be made or issued by the said Commissioners, after such notice to the parties interested as the said Commissioners shall deem sufficient; provided that no such error or omission shall be corrected or supplied more than five years after the execution of any such award, deed, or instrument.

Valuer to take particular circumstances of the cases into consideration.

XVI. In making any valuation under this Act the valuers shall take into account the facilities for improvement, customs of the

(*a*) Repealed as to future cases, by the Act of 1858, s. 2.

(*b*) See last note.

(*c*) See last note

manor, fines, heriots, reliefs, quit-rents, chief-rents, escheats, forfeitures, and all other incidents whatever of copyhold or customary tenure, and all other circumstances affecting or relating to the land which shall be included in such enfranchisement, and all advantages to arise therefrom, and shall make due allowance for the same.

If consideration not paid, the lord may take possession.

XVII. In case such enfranchisement consideration, or the interest thereon, shall not be paid at the time stipulated or provided for payment thereof respectively, the lord or other person for the time being entitled to the benefit thereof shall become entitled to the rents and profits of the land in respect of which the same enfranchisement consideration or interest shall be due; and it shall be lawful for such lord or other person to proceed to obtain possession of the said land, or the rents and profits thereof, in like manner as if the land had remained unenfranchised, and being lawfully seised into the hands of the lord for some default of a tenant; and all the rights and remedies by the said recited Acts or any of them given for the recovery of rentcharges, sums of money, and other payments, shall be applicable to the sums of money, interest, and payments payable under this Act, in the same manner as if such consideration had been a consideration for an enfranchisement under the said Acts (*a*).

Land so obtained by lord may be let for not exceeding seven years.

XVIII. Where any lord or other person for the time being entitled to the benefit of any enfranchisement consideration, or the interest thereof shall have obtained possession of the land under the powers and provisions of the said recited Acts or this Act, it shall be lawful for the said lord or other person as aforesaid to let such land, or any portion thereof, for any period not exceeding seven years, in possession, at such rent as can be reasonably obtained for the same; and the restitution of such land, on payment or satisfaction of the money due, and of all costs and expenses shall be subject and without prejudice to any such lease.

Steward's compensation to include preparation of deed of enfranchisement.

XIX. The steward for the time being of any manor of which any lands enfranchised under this Act shall be parcel shall, on every such enfranchisement, be entitled to receive from the tenant,

(*a*) See Act of 1841, ss. 47, 48, 49, 61, 70, and Act of 1843, ss. 8, 10.

of money, may by a simple entry on the court rolls of the manor, and for which entry the steward shall only charge such a sum as the said Commissioners shall direct, be charged, together with interest for the same at the rate of four pounds per centum per annum, on the lands enfranchised, in such manner as to the said Commissioners shall seem fit and proper: provided always, that any gross sum or rentcharge constituting the consideration for any such enfranchisement shall have priority over any sum so charged for expenses (*a*).

Confirmation of award by Commissioners to be proof of prior proceedings being regular.

XXXIII. The confirmation under the hands and seal of the Commissioners of any awards or the execution by the Commissioners of any deed or instrument whereby any enfranchisement shall be effected under the said Acts or this Act, shall be conclusive evidence that all the directions in relation to the enfranchisement intended to be effected by means of such award, deed, or instrument, which ought respectively to have been obeyed or performed previously to such confirmation or execution respectively, have been obeyed and performed; and no such award, deed, or instrument shall be impeached by reason of any omission, mistake, or informality therein, or in any proceeding relating thereunto, or on account of any want of any notices or consents required by the said Acts or this Act, or on account of any defects or omissions in any previous proceedings whatever in the matter of such enfranchisements.

After confirmation of apportionment, &c. in cases of enfranchisement, the customary modes of descent to cease, and the lands to descend and to be subject to dower and curtesy in like manner as freehold lands.

XXXIV. From and after the final confirmation of any schedule of apportionment under the said recited acts and from and after the final enfranchisement of any lands under this Act or the said recited Acts, the several lands included in any such enfranchisement shall thenceforth cease to be subject to the customs of borough-English or gavelkind, or to any other customary mode of descent, or to any custom relating to dower or freebench or tenancy by the curtesy of England, or to any other custom whatever; and all the laws relating to descents or to estates of dower or estates by the curtesy of England which shall for the time being affect and be applicable to lands held in free and common socage shall thenceforth affect and be applicable to the lands included in every

(*a*) Repealed as to future cases by the Act of 1858, s. 2; and see ss. 21. to 37.

such enfranchisement: provided always, that nothing herein contained as to curtesy or dower or freebench shall extend or be applicable to the case of any person who shall have been married before such enfranchisement shall have been completed: provided always, that nothing in this Act shall affect the custom of gavelkind as the same now exists and prevails in the county of Kent.

Commissioners to have power to suspend proceedings

XXXV. Notwithstanding anything herein contained, it shall be lawful for the commissioners from time to time to suspend any proceeding under this Act for the enfranchisement of any land, where any peculiar circumstances render it impossible, in the opinion of the said commissioners, to decide on the prospective value of the lands to be affected by such proposed enfranchisement, or where any especial hardship or injustice would unavoidably result from any compulsory proceeding: provided always, that when the said commissioners shall so suspend any proposed enfranchisement they shall state the reasons of such suspension in their general report, which shall be laid before Parliament as directed by the first recited Act.

Power to lord to sell rentcharge.

XXXVI. In all cases in which the person for the time being entitled to the receipt of any rentcharge under the said recited Acts or this Act shall be entitled thereto for a limited estate or interest only, or shall be a corporation not authorized to make an absolute sale of such rentcharge otherwise than under the provisions of this Act, it shall be lawful for such person, with the consent of the said commissioners, testified under their hands and seal, or, in the case of coverture, infancy, idiotcy, lunacy, or other incapacity, with the consent of the husband, guardian, committee, or trustee of such person so under disability, to sell and transfer such rentcharge, the payment for which shall be made in manner hereinafter mentioned.

Commissioners to certify the amount of consideration-money for redemption.

XXXVII. In every case in which a rentcharge is payable under the provisions of the recited Acts or this Act the commissioners shall upon the request of the owners of land chargeable with such rentcharge, or any of them certify under the hands and seal of the commissioners the sum of money in consideration of which such rentcharge, may be redeemed; and when it shall appear to

Copyhold Act, 1841." "The Copyhold Act, 1843," "The Copyhold Act, 1844," or "The Copyhold Act, 1852," as the case may be.

Not to impede enfranchisement irrespective of this Act or powers in other Acts of parliament.

LV. Provided always, that nothing herein contained shall interfere with or prevent or impede the enfranchisement of any lands whatsoever which may be enfranchised irrespective of this Act, where parties competent to do so shall agree on such enfranchisement, or the exercise of any powers contained in any other Acts of Parliament.

SCHEDULE.

No. 1.

FORM OF DEED OF ENFRANCHISEMENT. (*a*).

This Indenture, made the day of in the year between *A.B.*, lord of the manor of of the one part, and *C.D.* of in the county of a tenant of the said manor, of the other part: whereas on or about the day of the said [*tenant*] was admitted tenant to the lands parcel of the said manor described in the schedule hereto, upon an absolute surrender passed to his use by [or by virtue of a bargain and sale from or by virtue of the will of *or* as customary heir of *as the case may be*]: Now this indenture witnesseth, that in consideration of the sum of pounds sterling by the said [*tenant*] to the said [*lord*] now paid, the receipt of which the said [*lord*] hereby acknowledges [or in consideration of the rentcharge to be reserved *as the case may be*], he the said [*lord*], in exercise of any power given him by the said Copyhold Acts, or any other power whatsoever, and with the consent of the Copyhold Commissioners hereby enfranchises and releases unto the said [*tenant*], his heirs and assigns, all the lands to which the said [*tenant*] was so admitted tenant as herein-before recited, and which are described in

(*a*) Authorised by s. 11 of this Act, which is however repealed as to future cases by the Act of 1858, s. 2.

Lord or tenant may compel extinguishment of claim to heriots.

VII. And whereas in many manors heriots are by custom due and payable to the lord by tenants of freehold or customary freehold lands holden of such manors: be it enacted, that at any time after any such heriot shall be due and payable with respect to any such freehold or customary freehold lands, it shall be lawful for the lord or the tenant to require and compel the extinguishment of all such claim to heriots, and the enfranchisement of the lands subject thereto, in the same way as if such lands were copyhold; and the same proceedings shall thereupon be had as are herein and in the Copyhold Act, 1852, mentioned with reference to the enfranchisement of copyhold lands, or as near thereto as the nature of the case will admit.

Mode of effecting compulsory enfranchisements.

VIII. When any lord or tenant shall, under the provisions of the Copyhold Act, 1852, or of this Act, require the enfranchisement of any land held of a manor, he shall give notice in writing (the lord or his steward to the tenant, or the tenant to the lord or his steward,) of his desire that such land shall be enfranchised; and the consideration to be paid to the lord for such enfranchisement, and also the sum to be paid to the lord in respect of such fine or heriot as mentioned in the last preceeding clause, shall, unless the parties agree about the same, be ascertained under the directions of the Copyhold Commissioners, and upon a valuation to be made in the manner following; that is to say,

Where the manorial rights to be compensated shall consist only of heriots, rents, and licenses at fixed rates to demise or fell timber, or any of these, or where the land to be enfranchised shall not be rated to the poor's rate at a greater amount than the net annual value of twenty pounds, then the valuation shall be made by a valuer to be nominated by the justices at a petty sessions holden for the division or place in which the manor or the chief part thereof is situate; provided that no justice, being lord, either in whole or in part, of such manor, shall take any part in nominating such valuer; subject, however to these provisoes: first, that if the parties agree to recommend to the Commissioners any person to be the valuer, such person shall be nominated by the Commissioners; and second, that either party may, upon paying the charges of his own valuer, have the valuation made as next hereinafter provided.

But when the manorial rights to be compensated do not cons
only of rents and heriots and such licences as aforesaid,
when the land to be enfranchised is rated to the poor's rat
at a greater amount than the net annual value of twenty
pounds, or where the valuation to be made is of the sum to be
paid to the lord in respect of such fine or heriot as mentioned
in the last preceding clause, then the valuation shall, unless the
parties agree to refer it to one valuer, be made by two valuers,
one to be appointed by the lord, and the other by the tenant;
and such two valuers, before they proceed, shall appoint an
umpire, to whom any points in dispute between them shall be
referred; and in case the valuers or umpire, as the
case may be, shall not make a decision and deliver the parti-
culars thereof in writing to the lord or the steward and to the
tenant, and to the Copyhold Commissioners, within forty-two
days after the appointment of such valuers, or reference of
the matter to the umpire, as the case may be, then the Commis-
sioners shall fix the consideration to be paid or rendered to th
lord; and in any case where, after notice to the lord or t
the steward or to the tenant so to do, either party sha
neglect or refuse, for twenty-eight days, to appoint his value
as may be after the expiration of such twenty-eight day
and in any case where any valuers shall, for the space
fourteen days after the appointment, be unable to agree
the appointment of an umpire, the commissioners shall appo
an umpire.

IX. The Commissioners may, by an order under seal, extend
time within which this Act directs that any valuer be appointed
any act to be done by such valuer be performed.

X. After the valuation has been made, or upon the receipt
the agreement of the parties, the Commissioners, having
such inquiries concerning the circumstances of the case as
shall seem fit, and having duly considered the applications
them by the parties, may frame an award of enfranchisement pro
the terms of the valuation, and in such form as they shall
and may confirm the same; and such confirmed award shall
the same force and validity for all purposes of enfranchisement
otherwise as a deed of enfranchisement now has under the pro

the value of land conveyed as consideration, or of consideration or compensation money, or of purchase money, or of the expenses of purchase and conveyances, shall be a first charge on such manor or land, and shall have priority over all mortgages, charges, and incumbrances whatsoever affecting such manor or land, (except tithe commutation rentcharges, and any charges or rentcharges which may have been or shall be charged upon the same land for the drainage thereof, by virtue of any of the statutes in that behalf,) notwithstanding the actual priority in point of date or anterior title of such mortgages, charges, and incumbrances; but any moneys already invested or previously secured or charged thereon may be continued on the security of the same, notwithstanding the imposition of the said charge under this Act.

Charge not to merge.

XXXIV. Any such certificate of charge may be taken by any person, although he may be the lord or tenant or owner of any manor or land charged thereby; and the same shall not merge in the freehold, unless the owner of such charge shall, by endorsement upon the certificate of charge or otherwise, declare in writing that it is his will that such charge shall merge and cease.

Sums charged how to be recovered.

XXXV. The owner for the time being of a certificate of charge shall, in respect of any payment in the nature of interest or instalment that may become due under the certificate, have the same remedies and be subject to the same conditions in the recovery thereof as are by the Copyhold Acts provided in respect of rentcharges; and for a further and additional remedy in that behalf, and in respect of any payment in the nature of interest, or of a periodical payment, or of an instalment, or of a gross principal sum that may be secured by the certificate, the manor or land shall from the date of the certificate stand charged with the respective sums mentioned in such certificate to be payable, and until such payment the owner for the time being of the certificate shall be deemed to stand seised of the manor or land as a mortgagee in fee thereof and it shall be lawful for the person so seised from time to time to adopt such means and proceedings as a mortgagee in fee of freehold land is entitled to, for the enforcing payment of principal sums, or interest, with the like right to obtain payment of all attendant and incident costs and expenses.

Land charged with enfranchisement considerations as on mortgage in fee.

Form of certificate of charge.

XXXVI. A certificate of charge may be in the form following:

'We, the Copyhold Commissioners, do hereby certify, that the 'land mentioned in the schedule to this certificate is charged 'with the payment to *A.B.*, his executors, administrators, or 'assigns, [*or* "to the lord of the manor of for the 'time being," *as the case may be*,] of the following series of 'periodical payments; that is to say the sum of £ 'payable on the day of A.D. ; the 'further sum of £ payable on the day of 'A.D. &c., [or "with the principal sum 'of £ with interest thereon after the rate of 'per centum per annum, the principal to be repayable in manner 'following; that is to say," *state the terms*]; and we do further 'certify that this certificate of charge was made in respect of con-'sideration money [or in respect of expenses]; and further, that 'after payment of the series of periodical payments above men-'tioned [or after payment of the principal money hereby charged, 'and all arrears of interest due thereon,] this certificate shall be 'void. In witness whereof we have hereunto set our hands and 'the seal of the said commissioners, this day of , 'A.D. 18 .

The Schedule.

'*E.F.*
'*G.H.*'

Form of transfer of certificate.

XXXVII. A transfer of a certificate of charge may be in the form following:

'I *A.B.* of hereby transfer the within certificate 'of charge to *C.D.* of

'Dated this day of A.D.

'*A.B.*'

Owner of two-thirds in undivided shares to be "tenant."

XXXVIII. When land is held in undivided shares the person for the time being in receipt of at least two thirds of the value of the rents and profits of such land shall be the "tenant" of such land for all the purposes of "the Copyhold Acts."

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